TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1925

No. 312

WESTERN PAPER MAKERS' CHEMICAL COMPANY AND TANGLEFOOT COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN

FILED MARCH 14, 1926

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In Equity

WESTERN PAPER MAKERS' CHEMICAL COMPANY, a Corporation Organized and Existing under and by Virtue of the Laws of the State of Michigan, and Tanglefoot Company (Formerly O. & W. Thum Company), a Corporation Organized and Existing under and by Virtue of the Laws of the State of Michigan, Plaintiffs,

vs.

UNITED STATES OF AMERICA and THE INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed August 13, 1924

To the District Court for the Western District of Michigan:

The Western Paper Makers' Chemical Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office in the Township of Kalamazoo, Michigan, within said District, and the Tanglefoot Company, (formerly the O. & W. Thum Company), a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office in the City of Grand Rapids, within said District, plaintiffs herein, respectfully show unto the Court as follows:

I

That the plaintiff, the Western Paper Makers' Chemical Company, is engaged in the manufacture of chemicals used [fol. 2] in the paper business in the City of Kalamazoo, Michigan, in said district, and in and about the manufacture thereof it uses large quantities of rosin, which it receives by freight shipped to it from points of origin in the southern states of the United States, viz. South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana.

That in connection with the shipment of said rosin the railroads interested in handling the same as freight have established certain tariffs in which the through rate on rosin to said City of Kalamazoo and other points is fixed and determined. That the railroads interested in handling said rosin and other products from the southern states known in interstate commerce proceedings as naval stores, filed with said Interstate Commerce Commission a certain tariff known as "J. H. Glenn's, I. C. C. A-424" to be effective September 1, 1923.

That the plaintiff, the Tanglefoot Company (formerly O. & W. Thum Company) is engaged in the manufacture of fly paper, and in and about which it uses large quantities of rosin, which it likewise receives by freight shipped, to-wit, from points of origin in the aforesaid southern states, and plaintiff's shipments are made, to-wit, to said city of Grand Rapids.

That these plaintiffs, as well as certain others interested in the freight rates, wrote protests to the said Interstate Commerce Commission calling its attention to the fact that the rates in the proposed tariff were unreasonable on said items and especially upon rosin; that thereafter the Commission suspended the time for going into effect of said tariff and on its own motion placed the same on what is known as its "Investigation and Suspension Docket" and proceeded to take proofs on behalf of the railroads interested in said tariff as well as on behalf of the shippers, touching the reasonableness of the freight rates so estab-
[fol. 3] lished, and proceedings were had so that finally the said Commission made certain findings in writing and certain orders, all of which are hereto attached and marked "Exhibits 1 and 2."

The Plaintiffs show that there was no substantial evidence supporting the findings of the Interstate Commerce Commission and that such findings were contrary to the indisputable character of such evidence as was produced; the entire record before said Commission is hereby referred to and made a part hereof and the plaintiffs will produce the same at hearing hereof or as the Court may direct.

That these Plaintiffs are advised that this matter is properly cognizable in the above entitled Court and that the proper parties to be made defendant in this proceeding are the United States of America and the Interstate Commerce

Commission of the United States, both of which are hereby expressly made parties defendant.

II

The plaintiffs show that by said findings and orders of the Commission the above mentioned tariff was cancelled but that permission was granted to the carriers to establish in lieu of the cancelled schedule, certain other rates which are materially higher from many points of origin than the rates previously in effect, which are set out on page 754 of Exhibit 1.

That these plaintiffs are interested only in the rates on rosin established in said tariff. That in the suspended schedule the origin territory was divided roughly into two parts, one known as Southeastern territory and the other known as Mississippi Valley territory, Southeastern territory being roughly described as that part of the above lying east of the line of the Louisville & Nashville Railroad from Pensacola, Florida, to Decatur, Alabama. That South- [fol. 4] eastern territory has heretofore been further divided into so called South Atlantic ports and interior Southeastern territory, and that Mississippi Valley territory has heretofore been further divided into so called Gulf Ports and Interior Mississippi Valley territory. That typical South Atlantic ports are Savannah and Brunswick, Georgia, and Jacksonville, Florida, and that typical Gulf Ports are Pensacola, Florida, Mobile, Alabama, and New Orleans, Louisiana.

That heretofore and up to the present time the rates on rosin from the South Atlantic Ports and the Gulf Ports to the Ohio River and points north have been less than the rates from the interior territory, in violation of the long and short haul clause of the fourth section of the Interstate Commerce Act.

The suspended schedule had the effect of equalizing the rates from the interior territory with the rates from the ports, thus removing the four section violations at the points of origin; that under the suspended schedule and at the present under the existing order of the Interstate Commerce Commission, fourth section violations obtain at destination points such as Kalamazoo and Grand Rapids; to this extent complainants have not had the consideration

that was accorded to the origin points. That the equalizing process was accomplished by slightly reducing the rates from the interior territory and by substantially increasing the rates from the ports. That such equalizing of the rates from interior territory with the rates from the ports should have been allowed only after a proper showing on the record; in the absence of such showing rates not higher than the Gulf Port rates should have been applied, because no justification for higher rates from Gulf Ports either to Cincinnati, the key-point, nor to points north thereof was offered.

[fol. 5] That plaintiffs secure their supply of rosin from both the interior territory and the ports in approximately equal quantities.

The plaintiffs show that the through rate on rosin established in said tariff is made up of the combination of the rate to Cincinnati, plus an additional rate from Cincinnati to Kalamazoo or other points of destination in states north of Cincinnati, and that said through rate as so made up is unlawful and that said Interstate Commerce Commission should have so held on the evidence before it, as well as a matter of law, and that said rate is unlawful in the following particulars:

(a) That the freight rates permitted by the Commission's order from Mississippi Valley territory to Kalamazoo are more than the freight rates from the same point of origin to Chicago, which is a longer haul than to Kalamazoo.

(b) That said rates permitted by the Commission's order from points in Mississippi Valley territory to Grand Rapids are higher than the rates from the same points of origin to the city of Milwaukee in the state of Wisconsin, which is a longer haul than to the city of Grand Rapids.

(c) That the rate from all the affected territory with minor exceptions was made the same to Cincinnati, both in the suspended schedule and in the rates permitted by order of the Commission, and the rate to Cincinnati was described by the carriers at the hearing to be the key rate to the territory beyond. That the distance beyond Cincinnati to Kalamazoo is less than to either Chicago or Milwaukee and the distance beyond Cincinnati to Grand Rapids is

less than to Milwaukee, Wisconsin. That the transportation service beyond Cincinnati to Kalamazoo and Grand [fol. 6] Rapids is less than Chicago or Milwaukee by reason of the shorter distance, and is the same regardless of the origin of the traffic. That transportation conditions to Kalamazoo and Grand Rapids were not shown to be less favorable than to Chicago and Milwaukee. That Kalamazoo is directly intermediate to Chicago and Milwaukee and Grand Rapids is directly intermediate to Milwaukee via various worked and workable routes. The supplemental order of the Commission given in Exhibit 2 permits the closing of certain routes in order to eliminate violations of the long and short haul clause of the fourth section of the act, at Kalamazoo and Grand Rapids. The Commission is without authority under the Interstate Commerce law to require the closing of routes that are not unreasonably circuitous in order to prevent violations of the long and short haul clause of the fourth section of the act, even if the rates be constructed on the basis of the short line mileage. These rates were not constructed on mileage, but were constructed on a group basis and the rates as approved by the Commission are constructed in the same manner.

III

That under the law the burden is upon the railroads presenting the new tariff to justify the reasonableness thereof, and under the practice and procedure before the Interstate Commerce Commission there is no presumption as to reasonableness of the increased rate. The presumption is directly opposite and the burden by law is placed upon the carriers presenting the tariff to establish the reasonableness thereof by competent evidence. That in this proceeding the railroads failed to carry said burden and they failed to produce any evidence establishing the reasonable- [fol. 7] of said through rates, and no evidence at all was presented by the railroads or anyone else tending to establish the reasonableness of said through rate to Kalamazoo and Grand Rapids.

The Railroads failed to produce any evidence tending to show the reasonableness of the rate to the river; that the record plainly indicates that the carriers could not account, nor could the Interstate Commerce Commission account for

the 33-cent rate to Cincinnati, except that it was a selected figure; that the laws do not permit a finding of reasonableness of any increase in rates without a sufficient justification, and which justification according to the Respondents' entire testimony was entirely lacking, and while the complaint is here directed to the failure of justification of the through rate to Kalamazoo and Grand Rapids, Michigan, that at the same time no justification was made in the record of the Cincinnati rate in the extent of its influence on the measure or relationship of the rates to points beyond, including the affected cities of Kalamazoo and Grand Rapids.

The only testimony which in any way had any bearing at all upon the subject was the evidence of one of the witnesses that the Illinois Central Railroad was a direct road running from certain of the points at which these shipments of rosin originated, to Chicago, and that it was possible that those who made up the tariffs had in mind the fact that this was a through railroad and that it made a through rate to Chicago of 37c.

The testimony of the Illinois Central Railroad representatives was directed to the New Orleans-Chicago rate and the plea of the one line haul for distances as great as those involved from the original points to Chicago and the af-[fol. 8] fected points in this complaint is not an element for consideration nor one that has ever been given any consideration by the Interstate Commerce Commission for distances as great as those involved in this proceeding. That the Commission itself grouped rates to the Ohio River without any apparent reference to the fact of one or two line hauls, and if the one line haul is to be considered, it could only be in the extent of the rates alone from New Orleans to Chicago and should not reflect where the destinations, such as Milwaukee, have two or greater line hauls the same as Grand Rapids or Kalamazoo. Further that no justification was offered for a 37¢ rate to Chicago nor any pleading of revenue necessity nor any showing that the present rate would not serve the purpose if backed up to intermediate points of entirely destroying fourth section violations.

The rates now in effect, the rates in the suspended schedule, and the rates permitted by the Commission in its order in I. & S. 1900 to Kalamazoo, Grand Rapids, Chicago and Milwaukee are set out in the statement below.

	Present rate	Suspended	I. & S. 1900
From South Atlantic Ports—			
To Kalamazoo	[1] 39	47.5	[3] 40
To Chicago	38	41	40
To Milwaukee	44.5	44	42
To Grand Rapids ...	[2] 44.5	48	[4] 41
From Gulf Ports—			
To Kalamazoo	34.5	47.5	39
To Chicago	30	37	37
To Milwaukee	33	40	39
To Grand Rapids ...	34.5	48	40

Rosin is desirable freight for handling because it may be shipped in cars not suitable for other merchandise; it may be shipped in cars with leaky roofs or otherwise defective. [fol. 9] It does not deteriorate in handling and the evidence before the Commission tended to show that claims for damages to that class of property while in the hands of the carriers were negligible.

The manufacture of paper is largely developed in the City of Kalamazoo and adjacent territory which is known in the paper industry as the Kalamazoo District. In connection with the manufacture of paper the manufacturer uses what is known as rosin size, which is produced largely by this plaintiff, the Western Paper Makers' Chemical Company, and is this plaintiff's largest tonnage. This plaintiff handles as much as thirty million pounds of rosin a year and the plaintiff is in competition with other manufacturers of rosin size with plants located in Chicago and elsewhere, and the differential in the freight rate between Kalamazoo and Chicago is a factor in this competition. If the proposed rate is allowed to stand and become effective, it will work irreparable injury upon the plaintiffs and the plaintiffs have no remedy except in a court of equity.

IV

That more than $3,000.00 is involved in this controversy.

[In pencil in copy:]

[1] 12¢ above River rate.

[2] 17.5 above River rate.

[3] 7¢ above River rate.

[4] 8¢ above River rate.

V

That the plaintiff, the Western Paper Makers' Chemical Company is a corporation as aforesaid and is a citizen of the Township of Kalamazoo in said district, and the plaintiff, the Tanglefoot Company is a corporation and a citizen of the City of Grand Rapids, in said district; that the plaintiffs are advised that the above entitled Court has jurisdiction of this matter.

That the only relief open to the plaintiffs is the issue of an injunction of this Court restraining the carrying into [fol. 10] effect of the order of said Interstate Commerce Commission making said tariff ineffective so far as it relates to the through rate on rosin from points of origin south of the Ohio River to the cities of Kalamazoo and Grand Rapids. That if said injunction does not issue the said order of said Interstate Commerce Commission giving full force and effect to said tariff will become effective August 20, 1924, and will work an irreparable injury to the plaintiffs by adding to the plaintiff, the Western Paper Makers' Chemical Company, an expense for freight rate per hundred pound- of 4½¢ on such rosin as is obtained from Gulf Ports and 1¢ on such rosin as is obtained from South Atlantic Ports, which will require the plaintiff to expend in a single year for additional freight rate an amount estimated at $4,000.00 on such rosin, and will require the plaintiff to pay in a single year for additional freight rate in excess of the amount of the Chicago rate, $3,000.00. That the plaintiff, the Tanglefoot Company, is put to a similar expense, amounting to $1,375.00 annually.

Wherefore Plaintiff prays:

1. That notice of the pendency of this proceeding be issued and served upon the defendants, the United States of America and said Interstate Commerce Commission, and they be required to answer this Bill of Complaint.

2. That a temporary and a permanent injunction issue restraining the order of the Interstate Commerce Commission establishing the said tariff so far as it relates on the through rate of rosin to the cities of Kalamazoo and Grand Rapids, Michigan.

3. That a decree be made modifying the order of the Interstate Commerce Commission in part so far as the same

relates to the establishment of a through rate on rosin from [fols. 11 & 12] points south of the Ohio River to points in states north of the Ohio River.

The Western Paper Makers' Chemical Company, by W. J. Lawrence, as Vice President. Tanglefoot Company, by Myron H. Hopkins, as Pres. Harry C. Howard, Attorney for Plaintiffs.

Duly sworn to by William J. Lawrence and Myron H. Hopkins. Jurat omitted in printing.

[fol. 13] EXHIBIT #1 TO BILL OF COMPLAINT

9270

INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket, No. 1900

Naval Stores from Southern Producing Points to Various Destinations

Fourth Section Applications No. 2174, etc.

[fol. 14] Investigation and Suspension Docket, No. 1900

Naval Stores from Southern Producing Points to Various Destinations

Fourth Section Applications No. 2174, etc.

Submitted December 5, 1923. Decided March 5, 1924

1. Proposed readjustment of the rates on naval stores from producing points in the Southeast and Mississippi Valley to various destination territories found not justified. Suspended tariffs ordered canceled and respondents required to file new tariffs containing rates on the basis herein prescribed.
2. Fourth-section applications denied.
3. Proposed rates on naval stores from Mississippi Valley points to the Gulf ports found not justified. Suspended tariffs ordered canceled and proceeding discontinued.

Frank W. Gwathmey, C. L. Hinnant, and Charles D. Drayton for southeastern and Mississippi Valley carriers.

L. L. Drescher for Louisville & Nashville Railroad Company.

Herbert S. Harr, Guernsey Orcutt, L. P. Day, S. C. Matthews, R. D. Hunter, P. D. Freer, J. J. Clark, and W. J. Keller for Central Freight Association lines.

George J. Bolender, R. C. Fulbright, E. C. Hulett, Thomas D. Guthrie, A. A. Adams, E. B. Gaines, J. W. Morgan, J. E. Bryan, J. E. Addicks, J. B. Morrow, W. E. Willey, Hugo Ignatius, Frederick J. Arthurs, William J. Pitt, R. L. Tuttle, W. H. Lyons, L. Richards, Samuel P. Beatty, J. M. Righton, F. J. Pillsbury, and R. L. Diggs for protestants.

Report of the Commission

Division 4, Commissioners Meyer, Eastman, and Potter

MEYER, Commissioner:

In tariffs filed with us and intended to become effective between September 1 and October 1, 1923, carriers operating in the Southeast and Mississippi Valley territory propose a comprehensive revision of the rates on naval stores from all points of production. The southeastern lines propose to revise the rates from the territory east of the line of the Louisville & Nashville from Decatur, Ala., to [fol. 15] Pensacola, Fla., comprising Georgia, Florida, the Carolinas, and part of Alabama, to Ohio and Mississippi River crossings, Memphis and north, Buffalo-Pittsburgh, central freight association, Illinois freight association, and western trunk-line territories. No changes in the rates to eastern trunk-line points are proposed at the present time, but a revision of those rates is contemplated as soon as agreement with eastern lines can be reached. From the Mississippi Valley east of the Mississippi River, changes in the rates are proposed to all of the above-named territories, including eastern points. It is also proposed to readjust certain rates from interior Mississippi Valley points to ports located on the Gulf.

Upon numerous protests by producers and dealers in naval stores and by manufacturers who use naval stores in the manufacture of other commodities, the tariffs were suspended until dates between December 30, 1923, and January

29, 1924. Respondents have voluntarily postponed the effective date of the proposed tariffs until March 29, 1924.

In supplements Nos. 30, 31, and 32 to Agent F. A. Leland's tariff I. C. C. No. 1531 and supplements Nos. 12 and 13 to his tariff I. C. C. No. 1587, the southwestern lines propose a revision of rates on naval stores from points in Louisiana and Texas west of the Mississippi River. The southwestern lines were not represented at the hearing and no justification of the proposed rates from the Southwest was attempted. An order requiring their cancellation has been entered.

The principal commodities known as naval stores are rosin and turpentine, and the less important commodities, the rates on which are included in the revision, are crude wood oil, pine gum, pine pitch, pine tar, pine-tar oil, pyroligneous liquor, rosin dross and rosin oil, which are generally considered rosin products, and fine oil, spirits of turpentine, and wood turpentine, generally classed as products of turpentine. Practically the entire production of naval stores in the United States is in Florida, Georgia, Louisiana, Mississippi, Texas and the Carolinas. The production in Florida exceeds that in any other State, that in Georgia is second, and that in Louisiana third. Naval stores are produced by three processes; the gum process by which the sap is taken from the live tree and distilled, the destructive process which involves the taking of dead waster wood and stumps and subjecting them to heat, and the distillation process by which the dead wood and stumps are distilled with live steam. Ninety per cent of the naval stores are produced by the first method at interior points. Rosin is used principally in the soap and paper industries, while turpentine finds its widest use among manufacturers of paints. Although there were numerous protests [fol. 16] against the changes in the rates on rosin and turpentine, protestants' testimony relates principally to the rosin rates. Rates will be stated in cents per 100 pounds unless otherwise indicated.

The largest production of naval stores is at interior points, from which they are shipped by rail to the south Atlantic and Gulf ports, where they are concentrated and graded and, in the case of turpentine, distilled, and shipped either by water or by rail to destination. As a result of the concentration and grading, ports like Savannah and

Jacksonville have become the leading markets, and the prices obtained at those ports govern the prices of the commodities throughout the producing territory. Until recently, Savannah has been the principal naval stores market, but the growth of the industry at Jacksonville has placed that port on a par with Savannah. There has also been considerable concentration at the Gulf ports, which include Pensacola, New Orleans, Mobile, and Gulfport, and the competition in the naval-stores industry between the south Atlantic and Gulf ports has become very keen.

By far the largest quantity of naval stores moves from the ports by water. A considerable portion is exported, and there is a large coastwise movement which supplies principally eastern trunk-line territory through the seaboard cities. A relatively small percentage of the total movement of naval stores is all rail, and it is chiefly to central, western, and Buffalo-Pittsburgh territories.

The rates from south Atlantic ports to central territory were originally made with relation to the water-and-rail rates from Jacksonville to Baltimore, Md., by water and thence by rail to destination. The competitive conditions existing between the south Atlantic ports and the Gulf ports also had their influence on the rates from Jacksonville. Originally, the all-rail rates from the south Atlantic ports were fixed differentials over the water-and-rail rates, but the differentials have not been maintained, because increases in the all-rail rates have not been made contemporaneously with increases in the water-and-rail rates. The result is that at the present time the all-rail rates from Jacksonville are lower than the water-and-rail rates. The rates from the south Atlantic ports are now the same, and some through rates are published to certain points in central territory, made up of the local rate to the Ohio River plus a specific published by the lines north of the river. The specific is said to be neither a local rate nor a division of a through rate, but in the nature of a proportional rate published to apply on this particular class of traffic. Through rates are published to Buffalo and Pittsburgh the same as those which apply from Mobile, Ala.

[fol. 17] From Carolina territory where formerly large quantities of naval stores were produced, but from which the movement at the present time is relatively small, the rates are made on combination of the local rate to Rich-

mond plus a proportional rate beyond. Some through rates on the Cincinnati combination have been published from this territory.

From interior points in Georgia, Alabama, and Florida, the present basis of rates is the full local to the Ohio River plus the specifics published by the central lines beyond. Generally, from points south of Jacksonville, the basis is the local rate to Jacksonville plus the rate from that point to the Ohio River plus specifics of the central lines north of the river.

Rates from the Gulf ports have always been lower than those from interior producing points in the Mississippi Valley, a condition which has resulted in such points as Pensacola, New Orleans, Mobile, and Gulfport becoming important shipping centers of naval stores. Because of keen competition between the Gulf and south Atlantic ports, there has been and is some relationship between the rates from all the ports and at the present time the rates to Cincinnati are the same. The rates from New Orleans to Chicago and related points have been influenced by the single-line rates of the Illinois Central and are lower than to other points in central territory. Pensacola, which is on the Louisville & Nashville, has been kept on a competitive basis with the other ports and has become the largest concentration point on the Gulf. From interior Mississippi Valley points to destination territories east of a line from Chicago to Indianapolis, Ind., the basis of the rates is the combination of rates to Ohio River gateways, plus specifics beyond.

The burden of justifying the proposed revision was assumed by the Atlantic Coast Line for the southeastern lines, by certain Mississippi Valley lines, and by the Louisville & Nashville with respect to the rates from Pensacola. Representatives of the central territory lines were present at the hearing but did not undertake to justify the proposed rates and merely introduced in evidence a history of the specifics furnished by them to southern lines from time to time, to be used in constructing rates to points north of the Ohio River. Prior to the publication of the suspended tariffs, rates from the Southeast to various destination territories were published on the sectional plan, under which the factors to and from the river crossings were named in the tariffs. All of the proposed rates are pub-

lished as through rates and the specifics of the central lines are not published as heretofore.

In connection with the hearing of the suspension proceeding, various fourth-section applications were also set [fol. 18] for hearing. At the present time, there are numerous departures from the provisions of the fourth section at producing points in the interior intermediate to the ports, created by the lower level of rates applying from the ports. One of the principal reasons for the proposed adjustment according to the respondents, is the removal of the fourth-section departures by making the rates from the ports and the interior points the same. No relief except such as might be required because of circuity of routes is asked by the principal southeastern and Mississippi Valley lines. Authority to depart from the provisions of the fourth section was requested by the Norfolk Southern, the Central of Georgia, and by the American Short Line Railroad Association, in behalf of the short-line railroads in the origin territory.

The reasons for the proposed adjustment, according to the respondents, are the removal of the fourth-section departures at interior producing points, the demand of interior producers that discrimination in favor of the ports be removed, the lack of uniformity in the rates from points on the lines originating the traffic, and the demand of carriers operating in central territory that the rates be revised. Respondents insist that the revision is not proposed for the purpose of increasing their revenues, but have made no test to determine whether their revenues would be increased.

The general basis of the adjustment which the respondents propose is the establishment of the same rates from the south Atlantic and Gulf ports, and the application of those rates from a large portion of the interior producing territory, which will result in a very general grouping of rates from practically all important naval-stores producing sections. The revision has been accomplished by substantial increases in the rates from all ports and by reductions in the rates from a large number of interior points, although the reductions in the rates on turpentine are fewer than those on rosin, and the increases in rates on turpentine are more substantial.

The rate from Jacksonville to Cincinnati has long been

considered by the southern lines as the key rate in the construction of naval-stores rates from the Southeast, and in making the revision the rates to Cincinnati were first decided upon. The proposed rates to that point are 33 cents on rosin and 57 cents on turpentine, and those figures were arrived at, as explained by respondents' witness, by averaging all of the rates in effect at the time the revision was made, which produced figures of 40 cents on rosin and 62.5 cents on turpentine. Applying the 10 per cent reduction to those figures resulted in rates of 36 and 57 cents. Subsequently, however, the rosin rate was fixed at 33 cents. The present rates from Jacksonville and New Orleans to Cincinnati are 27 cents on rosin and 38.5 cents on turpentine. The key rates thus fixed are made applicable to Cin- [fol. 19] cinnati from the south Atlantic and Gulf ports, and from practically all interior producing points located on southern trunk lines in the territory east of the Mississippi River and north of the line of the Seaboard Air Line from Jacksonville to River Junction, Fla. From short-line stations in the above territory, differentials of 3 cents on rosin and 6 cents on turpentine over the rates from trunk-line points are proposed.

In Barber Co. v. Director General, 61 I. C. C., 23, we found the rates from points on the Perry branch of the Atlantic Coast Line, which extends from Perry to Newberry, Fla., to points in Illinois, Wisconsin, Minnesota, Iowa, and States west thereof, not unreasonable but unduly prejudicial as compared with rates from Jacksonville. In complying with that order, the carriers published a temporary set of rates from the points of origin, and in the proposed adjustment attempt to carry out the terms of the order by establishing rates from points on the Perry branch, differentials of 3 cents on rosin and 6 cents on turpentine over the Jacksonville rates. The Perry branch is south of the Jacksonville-River Junction line of the Seaboard Air Line. The basis proposed from Florida points generally south of that line is the combination on Jacksonville. On traffic from such points, moving through Jacksonville, respondents have published from Jacksonville proportional rates 4.5 cents on rosin and 9 cents on turpentinne lower than the rates from Jacksonville proper. The proportional rates are applicable only on through traffic.

To other river crossings, the suspended rates are either

the same or differentials over or under the rates to Cincinnati. For example, the rates to Memphis, Tenn., Evansville, Ind., Henderson, Owensboro, and Paducah, Ky., and Cairo, Ill., are 4 cents on rosin and 7 cents on turpentine over the Cincinnati rates, from Carolina territory, and to St. Louis, Mo., East St. Louis, and Belleville, Ill., from the same territory, 9 cents on rosin and 15 cents on turpentine over Cincinnati. To the other Ohio and Mississippi crossings north of Memphis and south of St. Louis and to Nashville, Tenn., the rates from Carolina territory are the same as those to Cincinnati. From that portion of the Southeast known as Atlanta subterritory, the rates to St. Louis, East St. Louis, and Belleville are 4 cents on rosin and 7 cents on turpentine over the Cincinnati rates and to Nashville, Tenn., 3 and 5 cents respectively higher than the proposed rates from New Orleans. From Montgomery subterritory to Louisville, Owensboro, Henderson, Evansville, Cairo, Paducah, and Memphis, the rates are 3 cents on rosin and 5 cents on turpentine under the rates to Cincinnati, and from the same territory, east of the line of the Louisville & Nashville from Pensacola to Decatur, to St. Louis, [fol. 20] East St. Louis, and Belleville, 4 cents on rosin and 7 cents on turpentine over Cairo. West of that line, the rates to those river crossings are the same as the rates from the Gulf ports. The differentials over or under Cincinnati from the territory served by the Louisville & Nashville differ from those proposed from the territory served by the southeastern carriers.

To points in central territory east of a line from Chicago to Indianapolis, the proposed rates are made by adding to the rates to Cincinnati and other crossings specifics furnished by the central lines, which specifics are not published but are higher than the present published specifics, and are said to reflect the 5 and 15 per cent increases. The Illinois Central, having its own rails from New Orleans to Chicago, does not propose rates between those points on the Ohio River combination, but insists on the publication of rates via its line of 37 cents on rosin and 60 cents on turpentine, which are 4 and 3 cents higher than the proposed rates to Cincinnati. In order to place the south Atlantic ports on a competitive basis with the Gulf ports, from which the Illinois Central published the lower basis of rates, the southeastern lines proposed rates to Chicago 4 cents on rosin

and 7 cents on turpentine higher than the rates to Cincinnati, and to Milwaukee, differentials of 3 cents on rosin and 4 cents on turpentine over Chicago. The rates to Chicago and Milwaukee are applicable only in connection with the Chicago & Alton, Chicago & Eastern Illinois, Chicago, Burlington & Quincy, Chicago, Indianapolis & Louisville, Illinois Central, Louisville & Nashville, and Southern. Rates to those points via other carriers are the full combination of local rates to Cincinnati, and specifics beyond. From Carolina territory the differentials are somewhat higher on traffic to Milwaukee and to points north and west of Chicago.

The proposed rates to Indianapolis and intermediate points are the same from Carolina territory as to Chicago and as between the south Atlantic and Gulf ports are equalized. The rates to western trunk-line territory from south Atlantic ports and interior producing territory east of the Pensacola-Decatur line are differentials over the rates from the Gulf ports. To territory west of Chicago, Milwaukee, and Indianapolis, the combination basis applies with differentials over the rates from the Gulf ports, as maximum.

Respondents stated that the proposed rates from the Carolinas are higher than they will be ultimately and that they will be revised as soon as specifics are furnished by lines north of the Virginia gateways. That is also the situation with reference to proposed rates to Buffalo-Pittsburgh territory which ultimately will be lower than those proposed.

[fol. 21] What the southeastern and Mississippi Valley carriers appear to have done has been to equalize the rates from all producing territory to Cincinnati, and that was accomplished by substantially increasing the rates from the ports, from which most of the traffic has moved in the past. They have made the rates from the ports applicable generally from interior points located on southern trunk lines and from short-line stations they have made the rates differentials over the rates from trunk-line stations. The result is that the rates are blanketed from practically the entire producing territory with the exception of the rates from Florida and points on short lines. To points beyond the Ohio River, they have added to the local rates so fixed to

Cincinnati and other gateways new and higher specifics furnished by lines operating beyond the river, except that the rates to Chicago and related points have received special consideration *because of the action of the Illinois Central in* departing from the combination basis.

Appendixes A, B, and C compiled from exhibits of record show (1) the present and suspended rates from south Atlantic and Gulf ports to typical destinations; (2) present and suspended rates from interior producing points to typical destinations; (3) present and suspended rates from south Atlantic and Gulf ports to Ohio and Mississippi River crossings.

Although departures from the provisions of the fourth section have in a general way been removed at the points of origin, they still exist at some points of destination, as, for example, at Kalamazoo and Grand Rapids, Mich. The southeastern and Mississippi Valley lines offered no justification of such departures as may exist in the proposed adjustment, and the central carriers stated that there is no justification for such departures at points of destination in their territory. Most of the evidence introduced by the southern and Mississippi Valley respondents was in justification of the suspended rates to the river crossings. Very little evidence was introduced in support of the through rates, the southeastern and Mississippi Valley carriers apparently proceeding on the theory that they were required to justify only the rates to the river crossings and that the burden of supporting the proportions of the rates beyond the crossings rested upon the central lines. All of the rates in the proposed revision are published as through rates and the burden of proof is upon the respondents to justify them as such.

To show that the proposed grouping of the points of origin is proper, respondents introduced exhibits comparing the origin grouping on lumber, cotton, vegetables, oranges, and class rates with the proposed grouping of the naval-stores rates. The grouping of the suspended rates corresponds in a general way with the grouping of the [fol. 22] rates of those commodities, but the blanketing of the rates on naval stores covers a much wider territory.

The proposed rates were compared with rates from the same points of origin to eastern trunk-line destinations, and, for similar distances, are lower. For example, from

Fayetteville, N. C., to New York, N. Y., the rates are 36 cents on rosin and 60 cents on turpentine for a distance of 564 miles, as compared with the proposed rates of 37 *and 60 cents from Dothan, Ala., to Vincennes, Ind.*, a distance of 630 miles. They are also lower, distance considered, than rates on rosin from Jacksonville to southern points, where paper mills, which use large quantities of rosin, are located.

Other comparisons were made with the rates from southern points to northern destinations on glucose, sulphuric acid, alcohol, petroleum, peanuts, cottonseed oil, scrap iron, hides, lard compounds, tallow, lumber, and other commodities, of which there is a substantial movement. Rates on petroleum products from Jacksonville to Cincinnati, Indianapolis, Fort Wayne, and Toledo are 45, 46.5, 49.5, and 52.5 cents, as compared with proposed rates on rosin of 33, 37, 44.5, and 47.5 cents, and on turpentine of 57, 60, 74, and 77 cents, to the same points. The petroleum rates are said to have been published on a very low basis. Lumber rates from Jacksonville to Cincinnati, Kalamazoo, Chicago, and Buffalo are 31.5, 43.5, 39, and 43 cents, as compared with the proposed rosin rates from Jacksonville to the same points of 33, 47.5, 41, and 51 cents. The earnings under the proposed rates were compared with the earnings produced by the rates used in the comparisons, but in their computations, respondents have used 46,000 pounds as the average loading of rosin and 50,000 pounds as the average loading of turpentine, and have selected points of origin at the outer edges of the blanket instead of using the average distances of points embraced within the blanket. The evidence of record shows considerable variation in the loading of rosin, which ordinarily moves in barrels, in box cars, and of turpentine, a large amount of which moves in tank cars which are generally privately owned. It appears that average figures of 50,000 pounds per car for rosin and 57,000 pounds for turpentine would be more nearly representative.

Respondent made numerous other comparisons with the rates and earnings on various commodities from the Ohio River crossings to destinations in the Southeast, which showed that the earnings on rosin, based on average weight as computed by them, and for the longer distances, were less than those yielded by the rates on the commodities

with which the comparisons were made. Such comparisons are of little value not only because of the slight similarity between the commodities, but the lack of substantial showing that the illustrations used are representative.

[fol. 23] Reference was made to the case of Barber & Co. v. Director General, supra, in which we held that the rates from Florida points on the Perry branch of the Atlantic Coast Line to various destinations were not unreasonable. If those rates were in effect at the present time, they would be higher than the rates under suspension, but it must be remembered we considered in that case the rates from only a few points of origin, while in the present proceeding the suspended rates are blanketed over a very wide territory, and from most of the points from which the proposed rates are published, the distances are considerably shorter than from the points of origin in the above case.

As hereinbefore stated the rates from Florida points south of the Jacksonville-River Junction line, except points located on the Perry branch of the Atlantic Coast Line, are not blanketed but are the full combination on Jacksonville, although there is a portion of the traffic which never moves through that point. Respondents attempted to justify the rates from the Florida peninsula, because of the low traffic density in that State and other unfavorable conditions which have been recognized by the State commission and by us in various cases.

All of the protestants located in the producing territory represented at the hearing approved the respondents' proposal to place the ports and interior points on the same basis, but objected to the increases in the proposed rates and suggested different bases which were lower. They generally contended that the proposed revision would substantially increase the revenues of the carriers, which respondents' witness denied. He did admit, however, that their revenue would be substantially increased if the major part of the traffic moved from the ports as has been the situation in the past. But he contended that the equalization of the rates between the ports and interior producing points would result in a greater movement from interior points, from which rates generally will be reduced. In recent years the movement of naval stores from interior points has increased.

Jacksonville is and has been one of the largest markets

and concentration points for naval stores. Producers at interior points ship their products, chiefly in small quantities, to Jacksonville where it is graded and concentrated and, in the case of turpentine, distilled. By reason of the lower rates from Jacksonville, that market has become one of the chief shipping points in the entire producing territory. Under the proposed basis, whereby the rates from Jacksonville will be increased and the rates from interior points made the same as from the ports, it will no longer be of any advantage for the interior producer to [fol. 24] ship to Jacksonville, because by shipping direct to the destination territory, he will obtain a lower rate than by sending his output to the concentration point. As the basis for the through rates from points in the Florida peninsula is the combination on Jacksonville with the factor north of Jacksonville a proportional less than the rate from Jacksonville proper, whatever traffic moves through that point will not be permitted to stop there for grading, etc., on the basis of the through rates. Therefore, it is urged by the Jacksonville interests that in so far as the all-rail traffic is concerned, Jacksonville will be eliminated as a concentration point, and its position as a market will be impaired.

The Jacksonville representative insisted that if the proposed adjustment is permitted to go into effect, Jacksonville should be accorded transit or reshipping arrangements whereby naval stores can be transported to Jacksonville for grading, concentration, etc., and reshipped to destination at the balance of the through rates. He called attention to the fact that such an arrangement is and has been in effect at Pensacola for a number of years. The southeastern lines stated that there were no transit or reshipping arrangements on naval stores in the Southeast and expressed unwillingness to establish them at Jacksonville.

The Pensacola representative testified that, based on past movements from that point, the revenues of the carriers will be substantially increased under the proposed adjustment. Pensacola is the largest shipping point on the Gulf and is in active competition with the other ports and particularly with Jacksonville and Savannah, which ordinarily fix the prices of naval stores. Large expenditures for concentration facilities have been made, and the industries at

Pensacola are fearful that the proposed adjustment will result in decreasing the importance of that market.

The representative of Savannah and Brunswick, Ga., and numerous interior producers located principally in Georgia expressed their agreement to an equalization of the rates from the ports and the interior points, but strenuously objected to the level of the proposed rates and submitted suggestions for a readjustment which followed the general plan proposed by the carriers, but in which the rates from the ports are substantially the same as the present rates and rates from the interior are reduced to the level of the rates from the ports. The key rates which these protestants propose are 27 cents on rosin and 38.5 cents on turpentine as compared with the suspended rates of 33 and 57 cents from the ports to Cincinnati; to lower Mississippi and Ohio River crossings the same rates as apply to Cincinnati from the south Atlantic ports; and from the Gulf ports the usual differentials under Cincinnati.

[fol. 25] These protestants introduced in evidence other exhibits to show that the earnings under the present rates and under the rates they propose are ample and compare favorably with the earnings produced on other commodities which move from the Southeast. In computing the earnings, an average weight of 50,000 pounds on rosin and 57,600 pounds on turpentine have been used. Those figures were arrived at by averaging shipments moving from the south Atlantic ports and from Pensacola during the year ending July, 1923.

The Western Paper Manufacturers Chemical Company with plants at Kalamazoo, Pensacola, Jacksonville, and Savannah, and other industries located at Kalamazoo, allege undue prejudice against Kalamazoo and in favor of Chicago in both the present and proposed adjustments and ask that the undue prejudice be removed by the establishment of rates from the Southeast and from Pensacola no higher than the rates to Chicago. They also contend that the level of the proposed rates is too high and that fourth-section departures which have existed at Kalamazoo have not been removed. The protestants at that point receive large quantities of rosin which they use in the manufacture of rosin size. They now have pending before us a complaint in Docket No. 13157, Western Paper Makers Chemical Co. v. Director General, in which the rates from south

Atlantic ports and interior points to Kalamazoo are under attack.

The present rate on rosin from Jacksonville to Kalamazoo, a distance of 1,054 miles, is 39 cents and that rate is blanketed from all of the south Atlantic ports. It is made up of a rate of 27 cents to Cincinnati and the published specific of 12 cents beyond. From the Gulf ports the rate is 34.5 cents to Kalamazoo and as the rate to Cincinnati is 27 cents, a difference of 7.5 cents is left for the haul from Cincinnati to Kalamazoo. The proposed rates include increases in the factors north of the river from all of the ports to 14.5 cents, which makes the proposed rate to Kalamazoo from both the south Atlantic and Gulf ports 47.5 cents, which is higher than the proposed rate of 41 cents to Chicago from the south Atlantic ports and 37 cents from the Gulf ports. The distance from Jacksonville to Chicago is 1,063 miles, 34 miles greater than the distance to Kalamazoo. From Pensacola to Kalamazoo, a distance of 967 miles through the Cincinnati gateway, which is the logical route, the proposed rate is 47.5 cents as compared with the proposed rate of 37 cents to Chicago, a distance of 912 miles.

The central lines testified that there is no justification for a lower rate to Chicago than to Kalamazoo from the Southeast or from Pensacola and admitted that Kalamazoo is discriminated against in favor of Chicago by both the present and proposed rates. They stated that the same specifics to both points for the haul north of the Ohio River [fol. 26] were furnished to the southern lines and that they had no part in the adjustment which published lower rates to Chicago. Kalamazoo consumes greater quantities of rosin than Chicago and must compete in the sale of rosin size with producers at that point and also at points in eastern territory.

The southeastern lines attempted to justify the lower rates to Chicago on the ground that the single-line rates of the Illinois Central from the Gulf ports required them to establish lower rates to Chicago in order to move traffic to that point from the Southeast. New Orleans is not one of the most important markets of naval stores and most of the production is in the territory east of the Illinois Central line. The Illinois Central rates to Chicago are met by some lines which are able to reach that point only by a

two-line haul and there is no evidence to show that the rates of the Illinois Central to Chicago are on less than a reasonable basis.

In March, April, and May of 1923, the Western Paper Makers Chemical Company received 126 cars of rosin at Kalamazoo from interior producing points and from Jacksonville, Pensacola, and Brunswick. The average weight of the shipments was 54,406 pounds per car and the average rate of 40.3 cents produced average earnings of 8.3 mills per ton-mile and 22.6 cents per car-mile. The proposed rates from the same points of origin produce an average rate of 47.6 cents which would yield earnings of 9.8 mills per ton-mile and 26.8 cents per car-mile based on an average distance of 967 miles. Assuming the destination of the shipments to have been Chicago, the present average rate of 37.7 cents to that point would have produced 8 mills per ton-mile and 21.8 cents per car-mile and the proposed average rate of 38.6 cents, 8.2 mills per ton-mile and 22.3 cents per car-mile.

At Grand Rapids rosin is used in considerable quantities by the O. & W. Thumb Company, which manufactures sticky fly paper. The present and proposed rates on rosin to Grand Rapids from Savannah, a distance of 1,050 miles, are 44.5 and 48 cents, yielding ton-mile earnings of 8.4 and 9.1 mills. Over certain routes, Grand Rapids is directly intermediate to Milwaukee and Detroit, to which the proposed rates are 44 cents to Milwaukee, for a distance of 1,123 miles, and 47.5 cents to Detroit, a distance of 1,015 miles. From Pensacola to Grand Rapids the proposed rate is 48 cents for 1,016 miles, as compared with a rate of 40 cents to Milwaukee for 997 miles, and 47.5 cents to Detroit for 1,023 miles. The rates from both the south Atlantic and Gulf ports to Milwaukee are constructed by adding a differential over the rates to Chicago. Increases in the rates from the Gulf ports to Grand Rapids are approximately 39 per cent, as compared with increases of 21 per cent in the rates to Milwaukee. Protestants called atten- [fol. 27] tion to the fact that on practically all traffic from Gulf ports, including class-rate and commodity-rate traffic, Grand Rapids is accorded the same rates as Detroit and Cleveland, but in the proposed adjustment has been given higher rates than either of those points.

None of the respondents offered any justification of the

fourth-section departures at Grand Rapids and agreed that such departures as may exist should be removed.

Figures were introduced in evidence by representatives of protestants located at Mobile, Ala., Buffalo, N. Y., Detroit, Mich., Hamilton, Ontario, at points in Wisconsin, and at other points, showing that they would be required to pay additional freight charges in substantial amounts, if the proposed adjustment becomes effective. It must be borne in mind that while there have been numerous reductions in the rosin rates from interior points, the rates on turpentine have very generally been increased from the entire producing territory. Numerous protests were made against the proposed turpentine rates, and the representative of the industries which are the chief users of that commodity was present during part of the hearing, but was prevented from testifying because of illness.

Witness for the soap manufacturers whose consumption of rosin amounts to approximately 28 per cent of the entire domestic consumption, recommended, in lieu of the proposed adjustment, a modified mileage scale on naval stores. He contended that the consumer who pays the freight charges is entitled to rates based on mileage, and that the origin blanket proposed by the carriers is too large.

The mileage scale proposed is divided into blocks of 50 miles up to 1,000 miles, and in blocks of 100 miles from 1,000 to 1,600 miles. Such blocking will result in the blanketing of origin and destination points to a limited extent. The level of the rates in the mileage scale was arrived at by averaging all of the local rates from the interior producing points in Alabama, Georgia, and Florida to the south Atlantic ports for distances up to 300 miles and grading the rates for greater distances. Although those rates are all intrastate rates, there is no evidence of record to show that they are unduly low. On the contrary, they are the rates which have moved the traffic for a great many years, and the carriers have made no attempt to increase them. The rates arrived at by the above method from the south Atlantic ports to Cincinnati, based on an average distance of 770 miles, would be 28.5 cents; to Kalamazoo from Jacksonville, 1,054 miles, 31 cents; to Chicago from Jacksonville, 1,063 miles, 31 cents; to Grand Rapids from Savannah, 1,050 miles, 31 cents; and to Milwaukee from Savannah, 1,123 miles, 31.5 cents.

The revision proposed by the carriers contains substantial increases in the rates from those points from which [fol. 28] the larger portion of the traffic has moved in the past, as well as numerous reductions from interior producing points from which it is expected there will be a large movement in the future. The movement from most of the points from which reductions have been made has been small compared with the movement from the ports, and it seems probable that if the suspended rates are permitted to become effective the revenues of the respondents will be substantially increased. Naval-stores traffic is desirable traffic, the loading is comparatively heavy, damage claims are rare, rosin is usually transported in any kind of box-car equipment, and turpentine is transported in tank cars which are generally privately owned.

The scale of rates proposed by the protestant is based upon an improper rate of progression and although based upon average rates for the shorter distances results in rates which are too low for the greater distances. To destinations beyond the Ohio River the application of a continuous mileage scale would have the effect of providing a lower level of rates than those in effect in some instances. We are of the opinion, however, that the combination basis is not justified and that there is no controlling reason why through rates lower than those resulting from the combination on the Ohio River gateways should not be established.

We find that the proposed rates on naval stores from southeastern and Mississippi Valley, and Carolina territories to the destinations in the suspended schedules have not been justified. An order will be entered requiring the respondents to cancel the suspended schedules.

We further find that just and reasonable rates for the future from Jacksonville and points in Atlanta subterritory, and from New Orleans, and points in Montgomery subterritory and Mississippi Valley territory to representative destinations will be those set forth below:

To—	From Jacksonville		From New Orleans	
	Rosin	Turpentine	Rosin	Turpentine
	Cents	Cents	Cents	Cents
Cincinnati	33	52	33	52
Louisville	33	52	32	51
Cairo	33	52	28	44
St. Louis	37	58	31	49
Memphis	31	49	25	40
Nashville	30	47	30	47
Chicago	40	63	37	58
Kalamazoo	40	63	39	62
Milwaukee	41	64	38	60
Grand Rapids	41	64	40	63
Cleveland	39	62	40	63
Detroit	40	63	40	63
Columbus	37	58	37	58
Indianapolis	37	58	36	57
Buffalo	42	66	43	67

[fol. 29] The record does not afford a sufficient basis for prescribing rates from Carolina territory. Rates should be published in harmony with those prescribed from the Southeast.

Rates to other points in central territory should be made with relation to the rates to the points herein set forth.

Rates to points in western trunk-line territory are now made upon the combination basis. The record does not afford a basis for prescribing joint through rates. The rates for the future should in no instance exceed the lowest available combination, but nothing herein should be construed as approving the combination basis for such rates.

We find that reasonable rates from points in Florida on the Perry branch of the Atlantic Coast Line Railroad will be rates 3 cents on rosin and 6 cents on turpentine higher than the rates from Jacksonville, and that reasonable rates from other points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line will be rates 5 cents on rosin and 10 cents on turpentine higher than the rates from Jacksonville.

This record does not warrant the requirement that transit on traffic from Florida points be established at Jacksonville.

The production of naval stores in the Mississippi Valley is largely on small lines having a low density of traffic. There is practically no movement from the ports via these lines, and they will not be benefited by any increase from the ports, but will be materially affected by the reduction proposed from the interior points. Other short lines throughout the South are in much the same situation. We have heretofore permitted these short lines to maintain rates which are somewhat higher than the rates from the junction points with the trunk lines. We find that the rates from points on the short-line railroads from which higher rates are proposed in the suspended tariffs should not exceed the rates contemporaneously in effect from junction points of such lines with the trunk lines by more than 3 cents on rosin and 6 cents on turpentine.

Except from the ports there are practically no less-than-carload commodity rates on either rosin or turpentine. The less-than-carload rates from the ports are but a few cents higher than the carload rates and are manifestly on a lower basis than should be required. There is practically no movement in less-than-carload quantities between the points here involved and no serious objection was made to the cancellation of the rates. Under the basis proposed the rates from the ports will be made to correspond with the rates from the interior points. We find that the less-than-carload rates have been justified.

[fol. 30] Practically no evidence was introduced with respect to the revised rates from Mississippi Valley territory to eastern points. Upon this record, we find that the proposed increased rates have not been justified.

In addition to the adjustment of rates on naval stores hereinbefore described, the Mississippi Valley carriers proposed a readjustment of the rates on naval stores from points on their lines to the Gulf ports. This, it is stated, was done to provide a basis of rates on substantially the same level from all producing points in the Mississippi Valley to all the Gulf ports for similar distances and services. No justification of these proposed rates was made, except the mere statement that they were published for the sake of providing a uniform basis. Protest against these rates was made by the Edward Hines Lumber Company, Trustees, who are large shippers of naval stores from points which are affected. The evidence relating to these

rates is so meager that it is not possible to determine whether or not the adjustment is justified. The rates from Mississippi Valley points to the Gulf ports will be required to be canceled, without prejudice to the filing of new tariffs dealing with the situation.

We are not to be understood as here prescribing the grouping of points of origin, but we merely approve the grouping proposed by respondents and prescribe reasonable rates from the groups. Our findings in this case are based upon the record before us and are without prejudice to any different conclusions which may be reached upon a different showing with respect to the entire adjustment or rates to particular points.

Except in comparatively few instances, no justification was offered for the continuance of fourth-section departures. The portions of such applications which seek relief from the provisions of the fourth section with respect to rates on naval stores will be denied. This denial will not be made effective until May 20, 1924. In specific instances where carriers believe there is a reasonable ground for the continuance of fourth-section departures, applications may be filed showing specifically and in detail the departures sought to be continued and the reasons therefor.

An order will be entered requiring the cancellation of the suspended schedules. No order prescribing the rates herein found reasonable will be entered at this time. The respondents will be expected to establish such rates on or before May 20, 1924. If this is not done, we will enter an appropriate order.

Appendix A

To—	From south Atlantic ports				From Gulf ports			
	Rosin		Turpentine		Rosin		Turpentine	
	Present	Suspended	Present	Suspended	Present	Suspended	Present	Suspended
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Chicago, Ill	39	41	60	67	30	37	47	60
Kalamazoo, Mich	39	47.5	60	77	34.5	47.5	56	77
Milwaukee, Wis	44.5	44	63.5	71	33	40	50	64
Grand Rapids, Mich	44.5	48	62.5	79	34.5	48	56	79
Detroit, Mich	39.5	47.5	58	78.5	33	47.5	56	78.5
Cleveland, Ohio	39.5	47.5	57.5	78.5	33	47.5	56	78.5
Fort Wayne, Ind	39.5	44.5	56	74	34.5	44.5	51	74
Indianapolis, Ind	37	37	51.5	60	30	37	43.5	60
Columbus, Ohio	37	45	51.5	75	33	45	45	75
Cincinnati, Ohio	27	33	38.5	57	27	33	35.5	57
Louisville, Ky	27	33	38.5	57	24.5	30	31	52
Cairo, Ill	27	33	38.5	57	21.5	30	31	52
Memphis, Tenn	24.5	33	33	57	24.5	27	28.5	48
St. Louis, Mo	36	37	52.5	64	25.5	30	42	52
Buffalo, N. Y	41	51	57	82	41	51	56	82

Appendix B

To—	From Valdosta, Ga.				From Fayetteville, N. C.			
	Rosin		Turpentine		Rosin		Turpentine	
	Present	Suspended	Present	Suspended	Present	Suspended	Present	Suspended
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Kalamazoo, Mich.	47.5	47.5	78	77	48	47.5	70.5	77
Milwaukee, Wis.	56.5	44	81.5	71	45	49	75	79
Grand Rapids, Mich.	53	48	80.5	79	53.5	48	73.5	79
Detroit, Mich.	48	47.5	76	78.5	41	47.5	68	78.5
Cleveland, Ohio	48	47.5	75.5	78.5	38.5	47.5	68	78.5
Buffalo, N. Y.	49.5	51	75	82	42	51	61.5	82
Fort Wayne, Ind.	48	44.5	74	74	42	44.5	68	74
Indianapolis, Ind.	45.5	37	69.5	60	46	41	63	67
Columbus, Ohio	45.5	45	69.5	75	41	45	68	75
Chicago, Ill.	47	41	78	67	42	41	61.5	67

Appendix B—Continued

To—	From Dothan, Ala.				From Hattiesburg, Miss.			
	Rosin		Turpentine		Rosin		Turpentine	
	Present Cents	Suspended Cents	Present Cents	Suspended Cents	Present Cents	Suspended Cents	Present Cents	Suspended Cents
Kalamazoo, Mich	48.5	47.5	69	77	43	47.5	70.5	77
Milwaukee, Wis	57.5	40	72.5	64	....	....	....	....
Grand Rapids, Mich	51.5	48	71.5	79	46.5	48	70.5	79
Detroit, Mich	49	47.5	70.5	78.5	....	....	47.5	78.5
Cleveland, Ohio	49	47.5	70	78.5	....	....	47.5	78.5
Buffalo, N. Y	63	51	80.5	82	....	....	51	82
Fort Wayne, Ind	47	44.5	66.5	74	43.5	44.5	67.5	74
Indianapolis, Ind	44	37	60.5	60	....	....	....	....
Columbus, Ohio	46.5	45	64	75	43.5	45	66	75
Chicago, Ill	49	37	72.5	60	....	....	....	....

[fol. 32]

Appendix C

	From south Atlantic ports				From Gulf ports			
Louisville, Ky	27	33	38.5	57	24.5	30	31	52
Cairo, Ill	27	33	38.5	57	21.5	30	31	52
Memphis, Tenn	24.5	33	33	57	24.5	27	28.5	48
St. Louis, Mo	36	37	52.5	64	25.5	30	42	52
Cincinnati, Ohio	27	33	38.5	57	27	33	35.5	57

[fol. 33] Orders

At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office in Washington, D. C., on the 5th Day of March, A. D. 1924.

Investigation and Suspension Docket, No. 1900

Naval Stores from Southern Producing Points to Various Destinations

It appearing, That by orders dated August 30, 1923, and September 17 and 18, 1923, the commission entered upon a hearing concerning the reasonableness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until January 29, 1924, and that the operation of said schedules was voluntarily deferred by respondents herein until March 29, 1924;

It further appearing, That a full investigattion of the matters and things involved has been had, and that the division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel such schedules as are now under postponement, on or before April 15, 1924, upon notice to this commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act.

Fourth Section Order No. 8852

Naval Stores from Southern Producing Points

Application Nos.—	Filed by—
2174, 2192, and 2194	W. P. Emerson, agent.
1613	A. D. Hall, agent.
542	Alabama Great Southern Railroad Company.
703	Atlantic Coast Line Railroad Company.
1530	Central of Georgia Railway Company.
1747	Chesapeake & Ohio Railway Company.
2045	Illinois Central Railroad Company.
1952	Louisville & Nashville Railroad Company.
2138	Mobile & Ohio Railroad Company.
458	Nashville, Chattanooga & St. Louis Railway.
601	New Orleans & Northeastern Railroad Company.
1074	Norfolk Southern Railroad Company.
1561	Norfolk & Western Railway Company.
1573	Seaboard Air Line Railway.
1548	Southern Railway Company.
1021	Western Railway of Alabama.
2043	Yazoo & Mississippi Valley Railroad Company.

[fol. 34] By the above-numbered applications carriers parties thereto ask, among other things, for authority to continue rates for the transportaion of naval stores (rosin and turpentine) in carloads, from points in Mississippi Valley and southeastern territories, to Ohio and Mississippi River crossings, and other points involved in Investigation and Suspension Docket No. 1900, without observing the provisions of the fourth section of the interstate commerce act. A hearing having been held upon the said applications, in so far as they relate to rates hereinbefore described, and full investigation of the matters and things involved therein having been had, and the commission having on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That those portions of said applications Nos. 458, 542, 601, 703, 1021, 1074, 1530, 1548, 1561, 1573, 1613, 1747, 1952, 2043, 2045, 2138, 2174, 2192, and 2194, by which carriers, parties thereto, seek to continue rates on naval stores (rosin and turpentine) from points in Mississippi Valley and southeastern territories to Ohio and Mississippi River crossings and other points in territories involved in Investigation and Suspension Docket No. 1900, without observing the provisions of the interstate commerce act, be, and they are hereby, denied, effective May 20, 1924.

It is further ordered, That tariffs containing rates revised in accordance with the provisions of this order shall be made effective on statutory notice.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 35] Exhibit 2 to Bill of Complaint

9557

Interstate Commerce Commission

Investigation and Suspension Docket, No. 1900

Naval Stores from Southern Producing Points to Various Destinations

[fol. 36] Investigation and Suspension Docket, No. 1900

Naval Stores from Southern Producing Points to Various Destinations

Decided June 18, 1924

Upon further consideration findings in original report, 87, I. C. C. 740, with respect to adjustment of rates on naval stores from points in the Southeast and Mississippi Valley to various destination territories, modified in certain particulars.

Supplemental Report of the Commission

Meyer, Commissioner:

The rates on naval stores from south Atlantic and Gulf ports to practically all territories are now lower than the

rates from interior intermediate points, having been made to meet water-and-rail competition. In this proceeding the carriers proposed to remove the fourth-section departures by increases in the rates from the ports and reductions in the rates from interior points, practically all points of origin in the Southeast and Mississippi Valley being placed upon a group basis. The tariffs were suspended, and in our original report, 87 I. C. C. 740, we found the proposed revision of rates to Ohio and Mississippi River crossings and points in central, western trunk-line, and eastern trunk-line territories not justified, and prescribed what would constitute a reasonable adjustment to representative points.

Petitions for vacation of the order, for reconsideration and reargument were filed by certain protestants, and a petition for modification in some respects of the findings in our original report was filed by the respondents. The petitions for vacation of the order and for reconsideration and reargument have been denied. Rates and differences in rates will be stated in cents per 100 pounds. Unless otherwise indicated they are the rates on rosin.

From the Southeast rates from practically all points north of the Jacksonville-River Junction line of the Seaboard Air Line are, in the proposed adjustment, blanketed. In Barber Co. v. Director General, 61 I. C. C. 23, we found rates from the Perry branch of the Atlantic Coast Line unduly prejudicial to the extent that they exceeded rates from Jacksonville by more than 3 cents on rosin and 6 cents [fol. 37] on turpentine. This basis from these points was proposed by the respondents and approved by us. From other points in Florida south of the line referred to the respondents proposed to make rates by combination on Jacksonville, using north of that point proportional rates 4.5 cents on rosin and 9 cents on turpentine lower than the local rates from Jacksonville. In view of the fact that practically all other points in this general territory were proposed on a blanket basis we prescribed rates from the Florida points 5 cents on rosin and 10 cents on turpentine higher than the rates from Jacksonville.

The respondents ask a modification of the findings to permit the rates to be made upon the combination basis, using north of Jacksonville rates 5 cents on rosin and 10 cents on turpentine less than the local rates from Jacksonville. They urge that the suspended tariffs contain no rates from these

points; that the group thus fixed would extend as far as Key West on the Florida East Coast Railway, which line is not a party to the tariffs; and that as a general proposition both class and commodity rates from this territory are made on the combination basis. The producing territory in Florida does not extend beyond 283 miles south of Jacksonville. As compared with the differentials prescribed, 5 cents on rosin and 10 cents on turpentine, the respondents' basis would result in rates on rosin from 2.9 to 11.3 cents, and on turpentine from 3 to 32.5 cents, higher than the rates from Jacksonville.

In view of the fact that all producing points north of Jacksonville take a blanket rate, the respondents' proposed adjustment is not proper and places Florida points south thereof at an undue disadvantage. As the Florida East Coast Railway is not a respondent, our findings have no application to that carrier.

The rates from Jacksonville are 1 cent lower than from New Orleans, La., to Cleveland, Ohio, and Buffalo, N. Y. Although the distance from Jacksonville is less than from New Orleans, from other points in the New Orleans group the distances fairly compare with those from points in the Jacksonville group, and respondents seek a modification of our findings to permit the establishment of the same rates from the Jacksonville group as are prescribed from the New Orleans group. On the whole the distances from the Jacksonville group are slightly less than from the New Orleans group. No urgent necessity appears to exist for precisely the same rates from the two groups to these two destinations. If respondents consider the equalization necessary, this may be accomplished as well by reducing the rate from the New Orleans group as by increasing the rate from the Jacksonville group.

[fol. 38] To St. Louis, Mo., the rate prescribed from the New Orleans group is 1 cent less than the rate to Louisville, Ky., and Evansville, Ind., and respondents ask authority to increase this rate to the Louisville basis, inasmuch as over some routes traffic to St. Louis moves through Evansville. The rate prescribed to St. Louis is 1 cent higher than the suspended rate, and the necessary adjustment may be made by making the rate to Evansville 1 cent lower than that prescribed.

In the suspended schedules the same rates were proposed

from the New Orleans and Montgomery subterritory group to Cairo, Ill., as to Louisville, 30 cents, and to Memphis, Tenn., 3 cents lower, or 27 cents. The rates prescribed were to Louisville, 32 cents; to Nashville, Tenn., 30 cents; to Cairo, 28 cents; and to Memphis, 25 cents. From some points of origin, traffic to Cairo moves through Nashville, and respondents state that from Pensacola, Fla., rates to Cairo are generally made the same as those applicable to other Ohio River crossings. They desire to apply the Nashville rates, 30 cents, to Cairo from New Orleans, and the Louisville rate, 32 cents, to Cairo from Pensacola. To Memphis they desire to maintain the rate prescribed from New Orleans, Gulfport, Miss., and Mobile, Ala., 25 cents; but from Pensacola and points in Montgomery subterritory they desire to maintain the same rate to Memphis as to Nashville, 30 cents.

The rate to Nashville was made higher than it should have been because of the failure to consider the shortest routes from points in the producing territory; and the adjustment with respect to Cairo should be made by establishing to Nashville from Pensacola and points in Montgomery subterritory the lower Cairo rate. A similar adjustment may be made from the remainder of the New Orleans group if the carriers so elect. However, to Nashville the rate from Pensacola and Montgomery subterritory may well be less than from New Orleans. Just as rates may well obtain to Nashville from Pensacola lower than from New Orleans, so may rates properly obtain to Memphis from New Orleans lower than from Pensacola. If the Pensacola-Nashville rate be reduced to the Cairo basis, it will still be 28 cents, or three cents higher than the prescribed rate from New Orleans group to Memphis. Our findings in the original report will be modified to permit the application from Pensacola and Montgomery subterritory to Memphis of a rate of 28 cents on rosin and a corresponding rate of 44 cents on turpentine.

Respondents further ask a modification of the report to provide for the application of Jacksonville and Atlanta subterritory rates from points in Montgomery subterritory on and east of the lines of the Central of Georgia and Louis- [fol. 39] ville & Nashville from Columbia, Ala., to Crestview, Fla. This territory is in the extreme southeastern portion of Alabama and northern Florida, and the modifi-

cation is desired in order to obviate fourth-section departures where traffic from points in Alabama moves through points in Georgia. This situation has in the past been covered by fourth-section relief. The practice may properly be discontinued, and our findings in the original report will be modified accordingly.

The suspended rates to Milwaukee, Wis., were 3 cents on rosin and 4 cents on turpentine higher than the rates to Chicago. As compared with rates prescribed to points in central territory this difference in rates for an additional 85 miles is not warranted. The rates prescribed to Milwaukee were higher than to Chicago by 1 cent on rosin from both New Orleans and Jacksonville groups; and on turpentine 1 cent from Jacksonville and 2 cents from New Orleans higher than to Chicago. Respondents urge that the basis prescribed is without precedent and brings about an undue disturbance in the relationship between the rates to Milwaukee and those to Grand Rapids, Mich. This is not borne out by the showing of the present rates. However, in view of the relationship which has been shown to exist, our findings in the original report will be modified to permit the application of rates to Milwaukee which do not exceed the rates found reasonable to Chicago by more than 2 cents on rosin from both the New Orleans and Jacksonville groups and 4 cents on turpentine from the New Orleans group and 3 cents on turpentine from the Jacksonville group. This will result in rates on rosin and turpentine from Jacksonville no higher to Kalamazoo and Grand Rapids than to Milwaukee; but from New Orleans the rates to Milwaukee will be no lower than to Kalamazoo, Mich., but 1 cent lower than to Grand Rapids. If the respondents desire to keep open routes from Pensacola or other points in the eastern portion of the New Orleans group through Grand Rapids to Milwaukee, they will be able to do so by reducing the Grand Rapids rates from such points, but we shall not require them to do so.

In our original report, at page 755, after discussing the proposed less-than-carload rates, we said: "We find that the less-than-carload rates have been justified." Respondents have expressed doubt as to the meaning of this finding. Manifestly the intention of the finding was that the proposed less-than-carload rates had been justified.

An appropriate order will be entered modifying our findings in this proceeding.

[fols. 40 & 40a] Order

At a General Session of the Interstate Commerce Commission Held at Its Office in Washington, D. C., on the 18th day of June, A. D. 1924.

Investigation and Suspension Docket No. 1900

Naval Stores from Southern Producing Points to Various Destinations

It appearing, That on March 5, 1924, the commission entered its original report in the above-entitled proceeding; that a petition has been filed on behalf of respondents for modification of the findings in said report; and the commission having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the findings in the original report, 87 I. C. C. 740, be, and they are hereby, modified to provide that rates from Pensacola, Fla., and points in Montgomery subterritory to Memphis, Tenn., shall not exceed 28 cents per 100 pounds on rosin and 44 cents per 100 pounds on turpentine; that the rates to Milwaukee, Wis., shall not exceed 42 cents per 100 pounds on rosin and 66 cents per 100 pounds on turpentine from Jacksonville and Atlanta subterritory and 39 cents per 100 pounds on rosin and 62 cents per 100 pounds on turpentine from New Orleans and points in Montgomery subterritory and Mississippi Valley territory; and that the rates from points in Montgomery subterritory on and east of the lines of the Central of Georgia and Louisville & Nashville Railroads from Columbia, Ala., to Crestview, Fla., to points of destination here under consideration shall not exceed the rates from points in Atlanta subterritory to the same destinations.

It is further ordered, That the petition of the respondents in all other respects be, and the same is hereby, denied.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 41] Summons and marshal's return, filed September 4, 1924, omitted in printing.

[fol. 41a] In United States District Court

Exhibit in Evidence—Filed September 23, 1924

Certified Copy

9616

Interstate Commerce Commission

No. 13157

Western Paper Makers Chemical Company

v.

Director General, as Agent, Alabama Central Railroad Company, et al.

Submitted May 1, 1923. Decided July 1, 1924

Rates on rosin, in carloads from southern points of origin east of the Mississippi River to Kalamazoo and Grand Rapids, Mich., found not unreasonable or unjustly discriminatory. No damage shown to have resulted from any undue prejudice which may have existed. Complaint dismissed.

George J. Bolender for complainant.

R. L. Tuttle for intervener.

Royal McKenna for Director General of Railroads, as agent; and H. L. Walker, William Burger, Frank W. Gwathmey, Charles J. Rixey, and E. M. Davis for corporate defendants.

Report of the Commission

Division 3, Commissioners Esch, Campbell, and Cox

Cox, Commissioner:

Exceptions were filed by complainant and intervener to the report proposed by the examiner and the case was orally argued.

Complainant corporation has its principal office in Kalamazoo, Mich., and makes commodities used in the manufacture of paper. By complaint, seasonably filed, as amended, it alleges that during the statutory period 797 shipments of rosin were received by it at Kalamazoo from various points in the States of Louisiana, Mississippi, Alabama, Florida, and Georgia, that since Federal control it has continued to receive shipments of rosin from southern points, including points in South Carolina; and that rates charged on such shipments were and are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section 4 of the interstate commerce act and of section 10 of the Federal control act. Reparation and reasonable rates for the future are asked. Rates will be stated in cents per 100 pounds.

Complainant makes rosin size, the principal ingredient of which is rosin, and sells it to paper mills. As amended, the complaint alleges competition in the distribution of rosin size between complainant and manufacturers located at various points, unnamed; states that complainant's principal markets are in central freight association territory Wisconsin, and the Upper Peninsula of Michigan; and [fol. 41b] alleges, further, that every paper mill is a potential if not an actual competitor of complainant. The main ground of complaint is that rates from the South to Kalamazoo are in excess of rates from the same points to Chicago, Ill., Milwaukee, Wis., and Detroit, Mich., although by workable routes Kalamazoo is said to be intermediate to these destinations. Complainant and the manufacturer at Milwaukee now have a division of a territory of distribution, and are no longer competitiors. Complainant's brief asks rates not in excess of rates on rosin to Chicago.

The O. & W. Thum Company, a corporation having its principal place of business in Grand Rapids, Mich., intervened in support of the complaint and asks for rates to Grand Rapids from Pensacola and other southern points on bases similar to those asked by complainant. As explained at the hearing, intervener desires rates on rosin to Grand Rapids, not in excess of rates to Milwaukee or Detroit. The intervener uses rosin to make sticky fly paper and a gum known as tree tanglefoot. It has no claims for shipments which moved prior to April 15, 1920.

No movement is shown from any points in South Caro-

lina, and rates from points in that State will not be considered.

The gross weight of a barrel of rosin is 500 pounds. At its plant in Kalamazoo complainant uses about 50,000 barrels, or approximately 500 carloads per year. The intervener uses about 50 carloads of rosin per year. Of complainant's product 60 per cent moves outbound in tank cars owned by it; and the remainder moves in steel drums. Less than 1 per cent of all its shipments are in less-than-carload lots. Rosin moves inbound in any ordinary type of equipment. It is not easily injured, and there have been no claims for loss and damage. The plant in Kalamazoo has been in operation for about eight years. At the time it was established 50 per cent of the paper manufacturers at Kalamazoo made their own rosin size; to-day complainant supplies the Kalamazoo market and distributes throughout a wide territory.

No shipments are shown from points west of the Mississippi River. Rates from such points are referred to by the parties, and, generally, are materially higher than from points east thereof. Rates from points east of the Mississippi River over routes embracing lines west thereof to Chicago and to Michigan points are circuitous and no movement over such routes has been shown. Confining our attention, therefore, to rates from southern points east of the Mississippi River over lines east thereof to Chicago and points east thereof the rate situation complained of is illustrated by the following table which shows rates on rosin, in carloads, in effect February 15, 1923:

[fol. 41c]

To—	From Mobile, Ala.				From Savannah, Ga.			
	Distance	Rate	Ton-mile earnings	Car-mile earnings	Distance	Rate	Ton-mile earnings	Car-mile earnings
	Miles	Cents	Mills	Cents	Miles	Cents	Mills	Cents
Kalamazoo, Mich	963	34.5	7.16	17.9	1,001	39	7.80	19.5
Grand Rapids, Mich	1,011	34.5	6.82	17.1	1,052	44.5	8.46	21.1
Chicago, Ill	858	30	6.99	17.4	1,010	38	7.53	18.8
Milwaukee, Wis	943	33	6.99	17.4	1,095	43.5	7.94	19.8
Detroit, Mich	1,021	33	6.46	16.2	1,015	39.5	7.88	19.7
Cincinnati, Ohio	750	27	7.16	17.8	753	27	7.17	17.9

Car-mile earnings are predicated upon the assumption of average loads of 50,000 pounds per car; not upon the applicable minimum weight of 36,000 pounds per car; and distances are stated by the parties to have been computed by the shortest workable routes. Equal rates obtain from all Gulf ports and Mobile is used as representative; likewise the rate from Savannah has usually been the same as from Brunswick, Ga., and Jacksonville, Fla.

Rosin from interior points has generally moved to the ports for concentration and grading, and until recently there has been very little movement from such interior points direct to northern destinations. The rates from the interior points have invariably been upon a higher level than those from the ports, resulting in many departures from the provisions of the fourth section which were protected by appropriate applications.

Because of the absence of routing instructions, Kalamazoo and Grand Rapids are technically intermediate to Chicago, Detroit, and Milwaukee by possible routes, although the record indicates that actual movements over such routes would be unusual.

During the entire period covered by the complaint, the highest rate from Gulf ports to Kalamazoo was 42 cents, effective August 26, 1920, to August 7, 1921, inclusive. This rate, using the distance from Mobile to Kalamazoo, 963 miles, as representative, yielded earnings per ton-mile of 8.7 mills and per car-mile of less than 22 cents, assuming a carload of 50,000 pounds. Rates from south Atlantic ports are all made with relation to the rates from Savannah. The highest rate from Jacksonville and Brunswick was 48.5 cents, effective August 26, 1920, to June 30, 1922, inclusive, and, using the distance from Brunswick, 1,001 miles, yielded earnings of 9.7 mills per ton-mile and 24.5 cents per car-mile. The highest rate from Fernandina, Fla., the only point not a port from which any substantial movement is shown, was 54 cents and yielded earnings of 10.2 mills per ton-mile and 25.7 cents per car-mile. Fernandina is a local point on a branch of the Seaboard Air Line.

At the time this case was submitted defendants had in course of preparation a general readjustment of rates on [fol. 41d] naval stores, including rosin, from the Southeast and the Mississippi Valley to central freight association and other territories. Tariffs containing the proposed re-

adjustment were filed to become effective between September 1 and October 1, 1923. Upon protest by a large number of interested parties, including the complainant and intervener herein, the tariffs were suspended. In Naval Stores from *Southern Points, 87 I. C. C. 740, we found the proposed* rates not justified but fixed reasonable rates for the future. No order prescribing the rates found reasonable was entered, but the report stated that if those rates were not established on or before May 20, 1924, an appropriate order would be entered.

The general effect of this readjustment is to divide the points of origin in the Mississippi Valley and the Southeast, exclusive of Carolina territory, into two groups, the south Atlantic ports and interior points in Atlanta subterritory and the eastern portion of Montgomery subterritory being placed in one group and the Gulf ports and interior points in the remainder of Montgomery subterritory and in Mississippi Valley territory in another. From all points within each group the same rates will apply, except that from points on certain short-line railroads and from portions of Florida the rates will be differentials higher than the group rates. The new adjustment will result generally in the removal of existing fourth-section departures in the origin territory. The following table shows the rates found reasonable from Jacksonville and New Orleans, representative points in the respective origin groups, to the destinations here considered:

To—	From Jacksonville	From New Orleans
	Cents	Cents
Chicago	40	37
Kalamazoo	40	39
Milwaukee	42	39
Detroit	40	40
Grand Rapids	41	40

It will be noted that under this adjustment the rate from the Southeast to Kalamazoo will be the same as to Chicago and Detroit, and the rate to Grand Rapids will be 1 cent less than to Milwaukee. From the Gulf ports and Mississippi territory the rate to Kalamazoo will be 2 cents higher than to Chicago, and the rate to Grand Rapids will

be 1 cent higher than to Milwaukee. It appears that the Illinois Central by its single-line route controls the rates from New Orleans to Chicago and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made. It is [fol. 41e] understood that the routing under the new adjustment will be so restricted as to remove the technical fourth-section departures with respect to destination points hereinbefore referred to.

We find that the rates assailed were not and are not unreasonable, that the rates found reasonable in Naval Stores from Southern Points, supra, will not be unduly prejudicial to complainant and intervener herein, and that complainant and intervener are not shown to have been damaged by any undue prejudice which may have existed in the past. No unjust discrimination in violation of Section 2 has been shown. The complaint will be dismissed.

[fol. 41f] Order

At a Session of the Interstate Commerce Commission, Division 3, Held at its Office in Washington, D. C., on the 1st Day of July, A. D. 1924

No. 13157

Western Paper Makers Chemical Company

v.

Director General, as Agent, Alabama Central Railroad Company, et al.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the commission, division 3.

George B. McGinty, Secretary. (Seal.)

A true copy:

George B. McGinty, Secretary. (Seal of Interstate Commerce Commission, 1887.)

[fol. 42] [File endorsement omitted]

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed September 11, 1924

The Interstate Commerce Commission, defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plantiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

Answering Paragraphs I to V, inclusive, of the bill of complaint, said defendant, Interstate Commerce Commission, hereinafter called the Commission, admits and alleges that it made and entered the report and order of March 5, 1924, and the report and order of June 18, 1924, referred to in Paragraph I of the bill of complaint, and which reports [fol. 44] and orders are attached to and made a part of said bill as Exhibits 1 and 2.

The Commission further alleges that in connection with the subject matters covered by said reports and orders it accorded to all interested parties, including plaintiffs herein, a full and fair opportunity to be heard in public hearings in proceedings before it; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the plaintiffs herein, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination, on

behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said reports and orders, which included the Commission's decision, conclusions, orders, and requirements in the premises; that upon the evidence aforesaid, and as shown in and by said reports and orders, the Commission made the findings, stated the conclusions, and prescribed the rules and regulations and terms and conditions upon which said orders are based.

The Commission further alleges that said findings, conclusions, rules and regulations, and terms and conditions were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceedings as aforesaid, and the Commission denies each [fol. 45] of and all the allegations to the contrary contained in the bill of complaint.

The Commission denies that, as alleged in Paragraph II of the bill of complaint, said orders either permit or require violations of section 4 of the interstate commerce act at destination points such as Kalamazoo and Grand Rapids.

The Commission denies that, as alleged in Paragraph III of the bill of complaint, the plaintiffs will suffer irreparable injury if said orders of March 5 and June 18 are allowed to stand and become effective.

The Commission further alleges that, in making said reports and orders, it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including all matters covered by the allegations of the complaint herein.

The Commission further alleges that said orders were not made and entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained [fol. 46] in said bill of complaint, in so far as they conflict

either with the allegations herein or with either the statements or conclusions of fact included in said reports and orders of March 5 and June 18, which are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by P. J. Farrell, Chief Counsel.

Duly sworn to by Joseph B. Eastman. Jurat omitted in printing.

[fol. 47] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed September 12, 1924

United States of America, defendant, for answer to the bill of complaint filed herein against it, says:

I. Defendant has no knowledge of the matters and things alleged in paragraph I, it neither admits nor denies the same and in so far as they may become material upon the hearing it will require strict proof thereof, with these exceptions: (a) Defendant admits that the Commission conducted the hearings and filed the reports in the proceeding entitled "Investigation and Suspension Docket 1900, Naval Stores from Southern Producing Points to Various Destinations," reported as 87 Interstate Commerce Commission Reports, page 740, and 89 Interstate Commerce Commission Reports, page 634, respectively, and that Exhibits 1 and 2, attached to the bill of complaint, are copies; (b) Defendant denies specifically "that there was no substantial evidence supporting the findings of the Interstate Commerce Commission and that such findings were contrary to the indis-[fol. 48] putable character of such evidence as was produced."

II. Defendant specifically denies the matters and things alleged in paragraph II and each and every part of the same, in manner and form as alleged. It alleges that the matters and things alleged in paragraph II and sought to be put in issue before the court were all before the Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act. In its reports in writing with respect thereto, made after full hearing and on due notice to all of the parties, which state its conclusion, together with its decision, order or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues made by the parties.

III. Defendant denies the matters and things alleged in paragraph III and each and every part of the same, in manner and form as alleged.

IV and V. Defendant has no knowledge of the matters and things alleged in paragraphs IV and V, it neither admits nor denies the same, and in so far as they may become material upon the hearing it will require strict proof thereof.

Defendant denies each and every allegation in the bill of complaint contained not herein specifically admitted or denied.

Further answering the bill of complaint defendant alleges that all of the matters and things alleged therein and sought to be put in issue before the court were before the Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act. In its two reports in writing with respect thereto, hereinbefore referred to, made after full hearings and on due notice to all of the parties, which two reports state its conclusion, to-
[fol. 49] gether with its decision, order, or requirement in the premises, the matter and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues made by the parties.

Wherefore, having fully answered defendant prays that the bill of complaint be dismissed at the cost of the plaintiffs

and for such other and further relief and order as may be appropriate.

Blackburn Esterline, Assistant to the Solicitor General. Edward J. Bowman, United States Attorney.

[fols. 50-58] *Duly sworn to by Blackburn Esterline. Jurat omitted in printing.*

[fol. 59] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR INTERLOCUTORY INJUNCTION—Filed January 3, 1925

At a session of said Court held at the District Court Room in the City of Grand Rapids, Michigan, on the third day of January, A. D. 1925.

Present: Hon. Arthur C. Denison, Circuit Judge; Hon. Loyal E. Knappen, Circuit Judge; Hon. Clarence W. Sessions, District Judge.

This cause having been heard upon Plaintiffs' motion for interlocutory injunction and counsel for the respective parties having stipulated that final decree may be made upon the record submitted upon said motion and the arguments made thereon; upon due consideration it appearing to the Court that the bill of complaint is without merit, It Is Ordered, Adjudged and Decreed that the motion for interlocutory injunction be and it is hereby denied and that the bill of complaint be and it is hereby dismissed with costs.

A. C. Denison, Circuit Judge. L. E. Knappen, Circuit Judge. C. W. Sessions, District Judge.

[fol. 60] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed October 28, 1924

Per CURIAM:

Hearing on motion for interlocutory injunction in a suit to modify an order of the Interstate Commerce Commission, establishing tariffs on certain naval stores so far as they relate to rail rates on rosin from points south of the Ohio River to the Cities of Kalamazoo and Grand Rapids, Michigan. Both plaintiffs are Michigan corporations, the Paper Company doing business at Kalamazoo and the Tanglefoot Company at Grand Rapids, both being in central territory. Each plaintiff receives annually by freight large quantities of rosin shipped to it at its place of business above stated from points of origin in certain southern states. This hearing was had before three judges under the Act of October 22, 1913, C. 32 (38 St. 220; U. S. Comp. St., 1916, Sec. 998).

It appears from the Commission's report, without challenge, that practically the entire production of naval stores in the United States is in Florida, Georgia, Louisiana, Mississippi, Texas and the Carolinas, the first three states named being the heaviest producers, and relatively as to each other in the order above given; the largest production is at the interior points, from which shipments are made by [fol. 61] rail to South Atlantic and Gulf ports, where they are concentrated and crated and shipped by water or rail to destination. Savannah and Jacksonville are the principal South Atlantic ports, and Pensacola, Mobile and Gulfport the principal gulf ports, between which and the South Atlantic ports competition has become very keen.[1]

The Commission's order here attacked was made as the result of a suspension proceeding ordered by the Commission because of protests by producers and dealers in and shippers of naval stores, including plaintiffs, against a

[1] Broadly speaking, the territory east of the line of the Louisville & Nashville Railroad from Decatur, Alabama, to Pensacola, Florida, is called Southeastern territory, and west of that line, Mississippi Valley.

proposed comprehensive revision by carriers, in both the Southeastern and Mississippi Valley territory, of the rates on naval stores from all points of production. By the then prevailing tariffs, the rates from all South Atlantic ports to a given destination were the same, regardless of specific origin, some through rates being published to certain points in certain territory, made up of the local rate to the Ohio River plus a "specific" published by the line north of the river. A "specific," as stated by the Commission, is "said to be neither a local rate nor a division of a through rate, but in the nature of a proportional" (87 I. C. C. 742). From some producing points in Southeastern territory the rates to destination points were affected by certain locals. Rates from the Gulf ports had always been lower than from interior producing points in the Mississippi Valley. Because of competition between South Atlantic and Gulf ports, there was some relation between rates from all the ports, and at the time of the proposed revision the rates [fol. 62] from all the ports to Cincinnati were the same. The rates from New Orleans to Chicago had been influenced by the single-line rates of the Illinois Central, and were lower than to other points in Central territory.

By these tariffs the rate on rosin to Cincinnati was 27 cents per 100 lbs.; to Chicago, 39 cents from South Atlantic and 30 cents from Gulf ports; to Detroit 39.5 cents from South Atlantic and 33 cents from Gulf; to Louisville 27 cents from South Atlantic and 24.5 from Gulf; to Milwaukee 44.5 cents from South Atlantic and 33 cents from Gulf; to Kalamazoo 39 cents from South Atlantic and 34.5 from Gulf, to Grand Rapids 44.5 from South Atlantic and 34.5 from Gulf. Chicago's rate from the Gulf ports was thereby 9 cents, Milwaukee's 11.5 cents, Detroit's 6.5 cents, Kalamazoo's 4.5 cents, and Grand Rapids 10 cents lower than from South Atlantic ports.

By the proposed revision it was sought to equalize rates from all producing territory to Cincinnati, by increasing rates from the ports, the rates from the greater part of the territory being blanketed. To other river crossings the proposed rates were either the same as, or differentials over or under, the rates to Cincinnati. For example, the Cincinnati rate, while still the same from all ports, both Gulf and South Atlantic, was to be increased from 27 cents to 33 cents. To points beyond the Ohio River new and higher

specifics, furnished by lines operating beyond the river, were to be added. Chicago, Milwaukee and other related points, however, were given by certain carriers[2] lower rates than proposed for Ohio River combinations, on the [fol. 63] ground that single-line rates of the Illinois Central from New Orleans required the Southeastern lines to establish lower rates to Chicago in order to meet the Illinois Central competition. To illustrate: The rate to Chicago from South Atlantic ports was proposed to be increased to 41 cents from the then existing rate of 39 cents, and from the Gulf ports to 37 cents from the then existing rate of 30 cents. The rate to Milwaukee from Gulf ports increased from 33 cents to 40 cents while from South Atlantic ports it decreased from 44.5 cents to 44 cents; the rates to Kalamazoo and Detroit were increased to 47.5 cents and to Grand Rapids 48 cents from both South Atlantic and Gulf ports.

Upon full hearing, to which both plaintiffs were parties, the Commission found the proposed new rates not justified, ordered a cancellation of the suspended schedules and found the following to be just and reasonable rates for the future from South Atlantic and Gulf ports respectively[3]: Cincinnati, 33 cents; both routes; Chicago, 40 cents and 37 cents; Milwaukee, 41 cents and 38 cents; Kalamazoo, 40 cents and 39 cents; Grand Rapids, 41 cents and 40 cents; Detroit, 40 cents by both routes (87 I. C. C. 754). The rate to Milwaukee was later made 42 cents and 39 cents, thus making the South Atlantic rate to Kalamazoo the same as to Chicago and Detroit, and the rate to Grand Rapids one cent less than to Milwaukee; and from the Gulf the rate to Milwaukee 2 cents higher than to Chicago, and to Grand Rapids one cent higher than to Milwaukee (89 I. C. C. 637; 91 I. C. C. 226). It is these rates to Kalamazoo and Grand Rapids, so found by the Commission to be just and reasonable, which [fol. 64] the bill before us seeks to set aside.

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[2] These carriers were Chicago & Alton; Chicago & Eastern Illinois; Chicago, Burlington & Quincy; Chicago, Indianapolis & Louisville; Illinois Central; Louisville & Nashville and Southern. Rates by other carriers were the full combination of local rates to Cincinnati and specifics beyond (87 I. C. C. 746).

[3] The first rate state is South Atlantic. We find it unnecessary to set out the rates to other points than given in this opinion or to cover rates on turpentine, which, although involved in the Commission's hearing, are not in issue here.

Plaintiffs' main contention, broadly stated, is that there was no evidence before the Commission supporting the rates to these two cities as so finally fixed.

Recognizing the fundamental rule that an order of the Commission fixing rates is invalid unless supported by evidence (Interstate Commerce Commission v. Louisville & Nashville R. R. Co. 227 U. S. 88, 91; New England Divisions Case, 261 U. S. 184, 203, 204, and cases there cited), this Court cannot weigh the testimony as to the reasonableness of the rates or the wisdom of establishing them. Those subjects are finally committed to the judgment and discretion of the Commission, when acting within its power. Procter & Gamble v. United States, 225 U. S. 282, 297, 298; New England Divisions Case, 246 U. S. 457, 481; Seaboard Air Line Ry. Co. v. United States, 254 U. S. 57, 62.

We do not understand plaintiffs to deny that the subject-matter was within the Commission's jurisdiction and power. Its findings are made by the law prima facie true, and the Supreme Court has ascribed to them "the strength due to the judgments of a tribunal appointed by law and informed by experience." Illinois Central R. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 454; Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry., 218 U. S. 88, 110; Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541, 546.

A finding of the fact of reasonableness of a rate can thus not be pronounced arbitrary or unreasonable if there was competent evidence in its support. In the view we take of the case, we find it unnecessary to decide whether the rule that the burden of proof is upon the carrier to show the reasonableness of its proposed increase in rates (Interstate Commerce Act, Par. 7, Sec. 15) applies to rates prescribed by the Commission after a hearing upon the proposed increases. See Par. 2, Sec. 15a of the Act.[4] The entire record [fol. 65] before the Commission is in evidence here.

Plaintiffs concede that on the hearing before the Commission the lines south of the Cincinnati gateway offered evidence tending to show the reasonableness of that portion of the through rate from the points of origin to the river. The testimony so introduced related to both South Atlantic

[4] "The Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

and Gulf port rates. The Cincinnati rate therein concerned is the same that the Commission found reasonable, viz: 33 cents. The substantial criticism thus necessarily is that there was no testimony sustaining the specifics north of the river or of the rate as a through rate. But while we are cited to no direct testimony of the reasonableness of any one through rate or specific, there was testimony tending to show that the suspended rates from Ohio River crossings north, on the basis of rates south of the river as factors, were reasonable; (see 87 I. C. C. p. 747). And we think that for this and other reasons there cannot be said to be an absence of competent evidence thereof. It affirmatively appears that the specifics with which we are concerned north of the river are substantially less than the "specifics" or proportionals in actual use for a substantial period prior to the proposed revision which was the subject of the suspension proceeding. For example: Kalamazoo's old South Atlantic rate of 39 cents was 12 cents above the then river rate of 29 cents. By the 40 cent southeastern rate to Kalamazoo which the Commission adopted the specific is but 7 [fol. 66] cents above the new river rate. By the old Gulf schedules Kalamazoo's rate of 34.5 cents was 4.5 cents above Chicago and 7.5 cents above Cincinnati, while her new rate of 39 cents is but 2 cents above Chicago and 6 cents above Cincinnati. Grand Rapids' old South Atlantic rate of 44.5 cents was 17.5 cents above the River rate, while her new rate is but 8 cents above the River rate. Her old Gulf rate of 34.5 cents was 4.5 cents above Chicago and 7.5 cents above Cincinnati, while her new Gulf rate is but 3 cents above Chicago and 7 cents above Cincinnati. The increases of Kalamazoo's rates by both routes and of Grand Rapids' Gulf rate were thus not only due entirely to the increases of rates to the River and (apparently) to Chicago especially, but represented an actual decrease of specific. As has already appeared, Grand Rapids' South Atlantic rate is 3.5 less than her old rate, while Kalamazoo's South Atlantic rate is but one cent higher than her old.

Again, prior to the publication of the suspended tariffs rates from the southeast to various destination territories were published on the "sectional plan," the factors to and from the river crossings being named in the tariffs. For example: The tariff from Jacksonville to Kalamazoo was shown as 27 cents to Cincinnati and 12 cents beyond. From

the Gulf ports to Kalamazoo the rate was 34.5 cents. As the rate to Cincinnati was given as 27 cents, there was left 7.5 cents for the haul from Cincinnati to Kalamazoo. Each of these old specifics was thus substantially larger than the specific under the rates here under attack. We think it clear that the long-continued existence of established rates made up of a key rate to the River (or to Chicago), and which came into the instant case through an effort by the carriers to establish higher rates, was at least some evidence of the reasonableness of the new specifics contained in the rates adopted by the Commission. We see no merit in the suggestion thay the testimony of the reasonableness of the "specifics" was incompetent.

[fol. 67] Upon the issue of reasonableness the propriety of each factor was both competent and material, notwithstanding in the proposed new tariff the rate was published as a through rate. What we have said about the specifics or proportionals north of the river applies equally to both South Atlantic and Gulf rates, so far as through rates were based thereon. Further, the Commission had before it not only comparative distances from representative points of shipment in both South Atlantic and Gulf territory to destinations including Kalamazoo, Grand Rapids, and such comparable points as Cincinnati, Chicago, Milwaukee and Detroit, but tables showing ton-mile earnings and car-mile earnings from representative points of shipment, in both Gulf and South Atlantic territory, under both the old and the suspended tariffs, by the shortest workable routes to each of the destinations given immediately above.[5] We think the rates here assailed must be sustained unless unjustly discriminatory as against Kalamazoo and Grand Rapids, or both, or unless violative of the "long and short haul" clause (section 4) of the Act. By plaintiffs' brief in this court the charge of discrimination is, at best, faintly presented. The bill alleges generally that rates from the Gulf ports to Kalamazoo are higher than from the same point- of origin to Chicago, although the latter is the longer haul; that the rates from Mississippi Val-ey territory to Grand Rapids are higher than the rates from the same points of origin to Milwaukee, "which is a longer haul";

[5] See Commission's report in suit by plaintiffs against Director General, 91 I. C. C. 224-225.

and, more specifically, that the rate to Cincinnati was described by the carriers at the suspension hearing to be the key-rate to the territory beyond; that the distance from Cincinnati to Kalamazoo, is less than to either Chicago or Mil-
[fol. 68] waukee, and from Cincinnati to Grand Rapids less than to Milwaukee; that transportation conditions to Kalamazoo and Grand Rapids were not shown to be less favorable than to Chicago and Milwaukee, and thus that Kalamazoo is directly intermediate to Chicago and Milwaukee, and Grand Rapids directly intermediate to Milwaukee by way of various worked and workable routes. It will be observed that no charge of discrimination in South Atlantic rates is made.[6] Indeed, that rate to Kalamazoo is the same as to Chicago and Detroit, and two cents less than to Milwaukee, and to Grand Rapids is one cent less than to Milwaukee. From the Gulf territory, however, Kalamazoo's rate is the same as Milwaukee's, viz: one cent less than Detroit's, but two cents higher than Chicago's; and Grand Rapids' rate is one cent higher than Milwaukee's. But the direct and logical route from Cincinnati to Kalamazoo and Grand Rapids does not pass through either Chicago, Milwaukee or Detroit. Nor does the direct and logical route from Chicago to Milwaukee pass through either Kalamazoo or Grand Rapids. Moreover, by one of the comparative earning schedules before referred to, the distance from Mobile[7] to the points involved here were: to Cincinnati, 750 miles; Chicago (which is nearly 300 miles from Cincinnati), 858 miles; Milwaukee, 943 miles; Kalamazoo, 963 miles; Grand Rapids, 1,011 miles, and Detroit 1,021 miles. The Commission found that "because of the absence of
[fol. 69] routing instructions Kalamazoo and Grand Rapids are technically intermediate to Chicago, Detroit and Milwaukee by possible routes, although the record indicates

[6] Unless possibly as between Grand Rapids and Chicago. But apart from the influence of the lower Gulf rates to Chicago, it is a mistake to say that the distance from Cincinnati to Grand Rapids is less than to Chicago. We are cited to no reference, and we know of none supporting the statement in plaintiffs' brief, that the Commission finds that "there is no justification for the through rate to Grand Rapids which is higher than the rate to Chicago," if intended to refer to the new rate established by the Commission. Its findings are to the contrary. (87 I. C. C. at p. 754; 91 I. C. C. at p. 227.)

[7] Mobile would seem to be a fairly representative Gulf port. The Commission says that "distances are stated by the parties to have been computed by the shortest workable routes." 91 I. C. C. 225.

that actual movement over such routes would be unusual. (91 I. C. C. 225.)

The Commission further found that the Illinois Central controls the rates from New Orleans to Chicago, and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made (91 I. C. C. 226). We think that neither these findings nor the basing of the Mississippi Valley rate to Milwaukee upon the Chicago rate can be pronounced arbitrary or beyond the Commission's authority. It seems clear that by neither the old nor the later suspended Gulf port tariffs was the rate to Cincinnati regarded as the key-rate for Chicago and Milwaukee. The charge of discrimination therefore cannot be sustained. Seaboard Air Line Ry. v. United States, 254 U. S. 57-62.[8] We see no basis for the contention that the rates established by the Commission violate the Fourth Section of the Act. The Commission found that the suspended rates did have that effect, and in cancelling those rates and ordering new rates denied applications for relief from Fourth Section departures, with leave later to apply for relief where ground should exist therefor, (87 I. C. C. 756); and in modifying the rate from Milwaukee as before referred to, by reason of a charge of discrimination as against Kalamazoo and Grand Rapids, permitted—without requiring—the carriers to keep open routes from points in the eastern portion of the New Or- [fols. 70 & 70a] leans group through Grand Rapids to Milwaukee by reducing the Grand Rapids rates from such points (89 I. C. C. 637); and in its later order dismissing plaintiffs' complaint, which asked injunction against the rate adjustment (91 I. C. C. 226-7), the Commission said not only that "The new adjustment will result generally in the removal of the existing Fourth Section departures in the origin territory," but "It is understood that the routing under the new adjustment will be so restricted as to remove

[8] By the old established Gulf Port tariff rates to Cincinnati, Chicago and Milwaukee were, in the order above given 27 cents, 30 cents and 33 cents; by the suspended rates they were respectively 33 cents, 37 cents and 40 cents, while Kalamazoo's rate was 34.5 and 47.5. The rates from South Atlantic ports to the Louisville and Cairo river crossings, adopted by the Commission, were the same as to Cincinnati, viz: 33 cents; while the Gulf rates were in the case of Louisville one cent, and in the case of Cairo five cents, less than to Cincinnati, apparently due to the influence of the Illinois Central rates from New Orleans. (87 I. C. C. 754.)

the technical Fourth Section departures with respect to destination points hereinbefore referred to," which were Chicago, Milwaukee, Kalamazoo and Grand Rapids.

It results that the application for injunction must be denied.

At the hearing counsel for both parties orally expressed willingness that the final decree be made upon the record already submitted and the arguments made upon the motion. Should counsel still be so minded, they may file stipulation to that effect.

A. C. Denison, Circuit Judge. Loyal E. Knappen, Circuit Judge. C. W. Sessions, District Judge.

[fol. 71] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed February 19, 1925

The plaintiffs in the above entitled suit, conceiving themselves aggrieved by the decree made, filed and entered January 3, 1925, in the above entitled suit, dismissing bill of complaint and denying the plaintiffs' motion for an interlocutory injunction in their suit to modify an order of the Interstate Commerce Commission establishing tariffs on certain naval stores so far as they relate to through rail rates on rosin from points south of the Ohio River to the Cities of Kalamazoo and Grand Rapids, the hearing being had before three judges under the Act of October 22, 1913, C. 32 (38 St. 220; U. S. Comp. St., 1916, Sec. 998), hereby appeal from said decree and from every part thereof to the Supreme Court of the United States because of errors set forth in the assignments of error filed herewith, and pray that this appeal may be allowed and that a transcript of the records, proceedings and papers, evidence and exhibits in said cause, duly authenticated, together with the material exhibits introduced and used as evidence therein, be sent

to the Supreme Court of the United States. The plaintiffs pray that this appeal may be allowed.

Western Paper Makers' Chemical Co. Tanglefoot Company, by Harry C. Howard, as Attorney.

Dated Feb. 19th, 1925.

The foregoing claim of Appeal is hereby allowed.

A. C. Denison, as Circuit Judge, now generally designated to hold the District Court, and as Circuit Judge, sitting in this case pursuant to Act of Oct. 22, 1913.

Dated Feb. 19, 1925.

[fol. 72] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed February 19, 1925

The above named plaintiffs, being appellants on the appeal prayed for in the above entitled suit, now come by Harry C. Howard as their attorney and say that in the record and proceedings had in said cause and especially in and by the final decree made and entered January 3, 1925, dismissing plaintiffs' Bill of Complaint and denying the injunction in their suit to modify an order of the Interstate Commerce Commission establishing tariffs on certain naval stores so far as they relate to through rates on rosin from points south of the Ohio River to Kalamazoo and Grand Rapids, Michigan, and especially in and by the opinion filed in said cause, there is manifest error, for that:

1. The Court erred in denying said interlocutory injunction.

2. The Court erred in considering evidence which had been excluded by the Interstate Commerce Commission in a proceeding before it on the investigation and suspension of the through rail rate on rosin from the gulf ports to Kalamazoo and Grand Rapids, Michigan, and in considering the testimony thus excluded by the Commission as testimony upon which to base the said through rate on rosin as estab-

lished by the Interstate Commerce Commission, which [fol. 73] rates from the South Atlantic and Gulf Ports are as follows:

To—	From Jacksonville	From New Orleans
Cincinnati	$ .33	$ .33
Chicago	.40	.37
Milwaukee	.41	.38
Kalamazoo	.40	.39
Grand Rapids	.41	.40
Detroit	.40	.40

3. The Court erred in holding that the rates established by said Interstate Commerce Commission were not discriminatory as against Kalamazoo, Michigan.

4. The Court erred in holding that the rates established by said Interstate Commerce Commission were not discriminatory as against Grand Rapids, Michigan.

5. The Court erred in holding that the rates so fixed by the Interstate Commerce Commission were not in violation of the "long and short haul" clause, (Section 4) of the Interstate Commerce Act so far as concerns the through rates on rosin from the Gulf ports to Kalamazoo, Michigan.

6. The Court erred in holding that the rates so fixed by the Interstate Commerce Commission were not in violation of the "long and short haul" clause, (Section 4) of the Interstate Commerce Act so far as concerns the through rate on rosin from the Gulf ports to Grand Rapids, Michigan.

7. The Court erred in not holding that it was a shorter haul from the Gulf ports to the City of Kalamazoo, Michigan, than to the City of Chicago, Illinois, for the reason that the City of Kalamazoo is in fact a shorter distance by rail over the usual route.

8. The Court erred in not holding that the city of Grand Rapids was a shorter distance from the Gulf ports than the City of Milwaukee, Wisconsin, when figured by the usual [fol. 74] route.

9. The Court erred in considering the mileage from the Gulf ports to the city of Chicago by way of the Louisville and Nashville Railroad and Evansville, Indiana, and com-

paring that mileage with the mileage to the city of Kalamazoo, Michigan, figuring the latter mileage through the city of Cincinnati, Ohio, whereas if the mileage had been figured to Kalamazoo over the Louisville & Nashville Railroad by way of Evansville, Indiana, the actual mileage to Kalamazoo would have been less than the mileage to Chicago figured over the same route.

10. The Court erred in finding any evidence before the Interstate Commerce Commission sustaining the through rates as fixed by said Interstate Commerce Commission.

Western Paper Makers' Chemical Company, The Tanglefoot Company, by Harry C. Howard, as Attorney.

Dated February 19th, 1925.

Business Address: 301-303 Kal. Nat'l Bank Bldg., Kalamazoo, Michigan.

[fols. 75 & 76] Bond on Appeal for $500.00, approved and filed February 20, 1925, omitted in printing.

[fol. 77] Citation, in usual form, showing service on Edward J. Bowman, filed February 19, 1925, omitted in printing.

[fol. 78] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR TRANSMISSION OF ORIGINAL RECORD OF APPEAL AND ORDER GRANTING SAME—Filed February 21, 1925

Your petitioners, the Western Paper Makers' Chemical Company, a corporation, and the Tanglefoot Company, a corporation, plaintiffs in the above entitled cause, respectfully show unto the Court the following:

That this Court has entered a final decree dismissing plaintiffs' Bill of Complaint and denying plaintiffs' motion for an interlocutory injunction in its suit to modify an order of the Interstate Commerce Commission establishing tariffs on certain naval stores so far as they relate to through rail rates on rosin from points south of the Ohio River to the cities of Kalamazoo and Grand Rapids, and the petition for an appeal from such order to the Supreme Court of the United States has this day been allowed by this Court.

That the Judicial Code of the United States, Section 210, (Section 999, Comp. St. of U. S., 1916), in causes of this kind provides that "the Court may direct the original record to be transmitted on appeal instead of a transcript thereof."

[fol. 79] Wherefore the plaintiff prays that the Court may by its order direct the clerk of this Court to transmit the original record in said cause on the appeal to the Supreme Court of the United States.

Western Paper Makers Chemical Company, Tanglefoot Company, by Harry C. Howard, as Attorney.

To the Clerk of the Court:

The foregoing petition is granted and you are hereby directed to transmit the original record of the above entitled cause on the appeal to the Supreme Court of the United States.

Dated February 21, 1925.

A. C. Denison, as Circuit Judge Designated, etc.

[fol. 80] Acceptance of service of citation omitted in printing.

[fols. 81-83] Citation, in usual form, showing service on Edward J. Bowman, omitted in printing.

[fols. 84-93] Acceptance of service of citation omitted in printing.

[fol. 93a] Certificate to foregoing papers omitted in printing.

[fol. 94] In Supreme Court of the United States

[Title omitted]

Order Granting Certiorari for Diminution of Record—June 1, 1925

On suggestion of diminution of the record and motion for certiorari it is ordered that appellants be permitted to print the matter they will designate as enough for their purpose and to confer with counsel for the United States to agree if possible upon a short statement showing the scope of the whole evidence to enable the court to consider the issue whether there is any evidence supporting the finding of the commission.

[fol. 95] In United States District Court

[Title omitted]

Stipulated Narrative Form of Evidence Pursuant to Order of June 1, 1925

Statement Showing Scope of Evidence

To become effective on certain dates between September 1 and October 1, 1923, Atlanta, Birmingham & Atlantic Railway, Atlantic Coast Line Railroad, Central of Georgia Railway, Gulf, Mobile & Northern Railroad, Birmingham & Northwestern Railway, Louisville & Nashville Railroad, Mobile & Ohio Railroad, New Orleans & Northeastern Railroad, Norfolk Southern Railroad, Seaboard Air Line Railway, Southern Railway, The Western Railway of Alabama, and Agents W. P. Emerson, J. H. Glenn, and F. L. Speiden, filed schedules of tariffs proposing certain increases and reductions in the rates on naval stores from southern producing points to various destinations.

[fol. 96] Generally speaking, in all of that territory lying south of Tennessee and east of the Mississippi River to and including both of the Carolinas, naval stores are produced

and shipped therefrom into all of that territory lying west of the Buffalo-Pittsburgh line on the east and to and even beyond the Mississippi River on the west, including St. Louis.

Protests against the proposed changes in the rates were filed by the Turpentine & Rosin Producers Association of New Orleans, Florida Wood Products Company, Jacksonville Traffic Bureau, Edward Hines Yellow Pine Trustees, Carson Naval Stores Company, Wisconsin Traffic Association, Mobile Chamber of Commerce, Proctor & Gamble Company, Globe Soap Company, Larkin & Company, Paint Manufacturers' Association of the United States, Western Paper Makers' Chemical Company, Kalamazoo Chamber of Commerce, O. & W. Thum Company, American Box Board Company, Louisville Lead & Color Company, Peaslee-Gaulbert Company, F. F. Dalley Company, Shinola Company, Colgate & Company, National Rosin, Oil & Size Company, Berry Bros., Inc., and a great many other dealers in various naval stores products, and as a result thereof, the tariffs were suspended by the Interstate Commerce Commission.

The following tables illustrate the situation with respect to the rates that were in force and the rates proposed by the carriers but suspended by the Commission:

[fol. 97] (1) From South Atlantic Ports—

	In force, cents	Suspended, cents
To Chicago	38 5	41
To Kalamazoo	39	47 5
To Milwaukee	44 5	44
To Grand Rapids	44 5	48
To Cleveland	39 5	47 5
To Detroit	37 5	47 5
To Buffalo	41	51
From Gulf Ports—		
To Chicago	30	37
To Kalamazoo	34 5	47 5
To Milwaukee	33	40
To Grand Rapids	34 5	48
To Cleveland	33	47 5
To Detroit	33	47 5
To Buffalo	41	51

(2) From Valdosta, Ga.—	In force, cents	Suspended, cents
To Kalamazoo	47.5	47.5
To Milwaukee	56.5	44
To Grand Rapids	53	48
To Cleveland	48	47.5
To Detroit	48	47.5
To Buffalo	49.5	51
To Chicago	47	41
From Fayetteville, N. C.—		
To Kalamazoo	48	47.5
To Milwaukee	45	49
To Grand Rapids	53.5	48
To Detroit	41	47.5
To Cleveland	38.5	47.5
To Buffalo	42	51
To Chicago	42	41
(3) From Dothan, Ala.—		
To Kalamazoo	48.5	47.5
To Milwaukee	57.5	40
To Grand Rapids	51.5	48
To Detroit	49	47.5
To Cleveland	49	47.5
To Buffalo	63	51
To Chicago	49	37
From Hattiesburg, Miss.—		
To Kalamazoo	43	47.5
To Grand Rapids	46.5	48

[fol. 98] Hearings were held before Examiner Carter at Washington, D. C., October 1 to 5, 1923, inclusive. By their respective representatives and counsel, the foregoing carriers were all represented, as were the naval stores dealers named above, and in addition the following-named interested carriers: Norfolk Southern Railroad; Mobile & Northern Railroad and other Mississippi Valley Lines; Central Freight Association Lines; Pennsylvania Railroad; Cleveland, Cincinnati, Chicago & St. Louis Railway,

Baltimore & Ohio Railroad; Chicago & Eastern Illinois Railway; and New York Central Railroad.

R. J. Doss, Assistant General Freight Agent, Atlantic Coast Line Railroad, who had been connected with railroads in southern territory for more than 20 years, testified concerning his general experience and familiarity with the subject, difficulties with present rate structure, complaints of shippers with respect thereto, the situation with respect to alleged violations of the Fourth Section, and failure of the carriers to harmonize the differences between carriers, between shippers, and between carriers and shippers.
[fol. 99] The witness testified substantially as follows: that for more than ten years the adjustment on rates on naval stores from South Atlantic ports and intermediate points to Ohio and Mississippi River Crossings and Central Freight Association territory had been giving trouble to the initial lines, which expected to straighten out the situation in the Fourth Section revision of rates under way prior to the period of Federal Control (41-46). During the period of Federal Control there had arisen the demand of the Kalamazoo Chamber of Commerce for a readjustment of the rates on rosin and rosin dross, carloads, from South Atlantic ports to Kalamazoo so that the rates to that point would not exceed the then existing rates to Chicago. The question was deferred by the Railroad Administration. In 1920 producers of naval stores at Jacksonville and other South Atlantic ports began complaining with respect to the rates from South Atlantic vs. Gulf ports to Ohio River crossings and beyond. The lines beyond the Ohio River, since the 5% and 15% increases in their rates, have been pressing the southern carriers to revise the through rates on naval stores from southern points to points north of the Ohio River so as to reflect the 5% and 15% increases in the proportions beyond the Ohio River. The tariff was compiled and issued as shortly after February 19, 1923, as was possible.

The earliest mention of turpentine and rosin seems to exist in a manuscript dated 1610, preserved in the Public Record Office, London, and entitled "Instructions For Such Things As Are To Be Sent From Virginia." Bulletin No. 229, July 28, 1915, U. S. D. of A. The bulletin shows that pitch and tar were the chief products of the industry up to

the middle of the eighteenth century and that their extensive use in the construction and maintenance of sailing vessels caused them to be called "naval stores," a term now ap- [fol. 100] plied to the turpentine and rosin industry. Witness produces excerpt of that part of the bulletin dealing with the history of the naval stores industry in the United States. The principal production of naval stores is at present in Florida and Georgia (50-54). The largest production is in Florida.

There were numerous conferences between the representatives of the rail lines, and during the latter part of 1905 it was suggested that the rates from South Atlantic ports and Gulf ports to Cincinnati and Ohio River crossings be increased 2 cents per 100 pounds. All of the lines were willing to increase the rate from Cincinnati 2 cents per 100 pounds, but as the Illinois Central was unwilling to increase the rate from New Orleans to Chicago more than 1 cent because of the adjustment then available by coastwise steamships from Savannah through North Atlantic ports to Chicago, the lines other than the Illinois Central Railroad were unwilling to increase their rate to Cincinnati and the other points more than the increase to Chicago. This resulted in the rate from Jacksonville to Cincinnati being made 19 cents on rosin, effective May 31, 1906.

December 9, 1907, the rate on turpentine, carloads, from Jacksonville to Cincinnati was increased to 27 cents per 100 pounds. This was a part of a general revision of the rates on turpentine from South Atlantic ports and Gulf ports to Ohio and Mississippi River crossings and points beyond. Prior to 1900 no through rates were in effect to points north of the Ohio River and the rail lines carried their rates to the Ohio River crossings on a very low basis in order to reach the territory beyond on combination basis. During the latter part of 1911 it was discovered that rosin and [fol. 101] rosin size from Savannah to Milwaukee and points beyond in the Fox River paper manufacturing district were moving entirely by the Merchants & Miners Transportation Company through Baltimore. After handling the matter through correspondence, the initial lines at South Atlantic ports decided to reinstate through rates from South Atlantic ports to Chicago and Milwaukee, observing differential of 3 cents per 100 pounds higher than the water-and-rail rates applicable by the M. & M. T. through Baltimore. At-

lantic Coast Line October 5, 1911, sought necessary Fourth Section relief to enable it to publish through all-rail rates on the basis named without observing such rates as maximum from and to intermediate points. The Commission denied the application but later took favorable action upon a second application on the rates from Savannah, in recognition of the fact that the all-rail routes were seeking to compete for this traffic from Savannah to such points as Milwaukee, with the rail-and-water routes through Baltimore or other North Atlantic ports. In accordance with a Fourth Section order through rates were issued by Atlantic Coast Line and similar rates from Brunswick and Jacksonville were issued under the Group Relationship Theory, the rate from Jacksonville to Chicago becoming 25 cents. After the all-rail rates from Jacksonville were issued on the same basis as from Savannah, attention was called to the fact that the water-and-rail rates from Jacksonville were higher than from Savannah, the proper difference being 1½ cents per 100 pounds. In order to place the all-rail rates from Jacksonville on the differential basis 3 cents per 100 pounds higher than the water-and-rail rates, the rate to Chicago was increased from 25 to 26½ cents. On June 29, 1921, for the first time, through rates were published to all the Central Freight Association points to which the Central Freight Association lines had named proportional rates on naval stores. June 25, 1918, the rates were increased 25% by [fol. 102] General Order No. 28, U. S. R. A. The rates to Cincinnati were increased 25% and the rates on rosin to Chicago increased 33-1/3%, effective August 26, 1920. This increase was made under authority of Ex parte 74. December 26, 1921, the rate on rosin from Jacksonville to Kalamazoo was reduced to 43½ cents, as that rate was found to be in effect via the Southern Railway. July 1, 1922, all of the rates were reduced 10% in accordance with Order I. C. C., Docket No. 13293. February 10, 1923, the through rate on turpentine from Jacksonville to Chicago and Kalamazoo was reduced from 61 to 60 cents per 100 pounds. While the all-rail rates from South Atlantic ports to Chicago were reduced in 1913 to be 3 cents per 100 pounds higher than the water-and-rail rates, they have not since been kept on that basis. After July 1, 1922, the all-rail rates on rosin, carloads, to Chicago from Jacksonville were 39½ cents, and from Savannah, 38 cents. The water-and-

rail rate from both points to Chicago is 43 cents. "We feel that the rates from Jacksonville and Savannah, which were originally established, and have since been maintained under the circumstances I have just described are very low. The history of them clearly indicates that they were depressed rates, and we are convinced that they are now too low, because they are lower than the water-and-rail rates, to meet which they were originally established."

On May 3, 1912, rates were established from Jacksonville to Buffalo on the same basis as rates from Mobile to Buffalo, rosin 27 cents, and turpentine 38 cents per 100 pounds. There have been no changes in these rates except such as were made under Ex parte 74 and the 10% reduction of July 1, 1922. Present rates, rosin 41 cents, turpentine 56 cents. [fol. 103] The suspended rates from Jacksonville and Mobile to Buffalo and Pittsburgh are the same. The suspended rates from South Atlantic ports to Buffalo-Pittsburgh territory are on exactly the same basis as has been maintained all along, 50 cents.

[fol. 104] The through rates to Cincinnati from the interior territory were made very low because of the extremely low rates in effect via rail and via water-and-rail from the South Atlantic ports. There have been no changes in the rates then established except those resulting from Ex parte 74 and the 10% reduction of July 1, 1922. The rates from Willacoochee to Cincinnati in the suspended tariff represent a reduction of 2½ cents on rosin and an increase of ½ cent on turpentine. The exhibit shows that prior to February 10, 1923, there were no through rates from Willacoochee to Chicago and Kalamazoo. February 10, 1923, the rates from Willacoochee to Cincinnati were included in the tariff issued on the sectional plan which resulted in through rates to Central Freight Association points shown therein on basis of Ohio River combination. The rates from Willacoochee to Chicago and Kalamazoo in the suspended tariff represent reduction. We have today no through rates from Willacoochee to Buffalo. The rates from Willacoochee to Chicago in the suspended tariff represent reductions. There is a reduction on turpentine to Kalamazoo from 78 to 77 cents. Generally speaking, the rates from Atlantic Coast Line stations in North and South Carolina to Ohio River crossings and points beyond were originally

constructed on the basis of local rates to Richmond plus proportions named by C. & O. beyond.

The first through rates were published only on rosin and were made on Richmond combinations, using the local rate of 12 cents beyond from Fayetteville to Richmond plus proportional rates beyond Richmond of 14 cents to Cincinnati and 16 cents to Chicago. The first through rates on turpentine of which we have record became effective in 1907 and were made, using our local rate of 25 cents to Richmond plus the rosin proportion beyond. The [fol. 105] first through rate on turpentine to Kalamazoo in 1916, 25 cents to Richmond plus 22.22 cents beyond. All of these rates were increased 25% under Ex parte 74, June 25, 1918. Through error the rate on rosin to Cincinnati was 32 cents instead of 32½. Under Ex parte 74 the rates to Cincinnati were increased 25%, and to the other points 33-1/3%. July 1, 1922, the rates were reduced 10%. February 10, 1923, we published through rate on rosin from Fayetteville to Kalamazoo based on Cincinnati combination. From Carolina territory the actual movement at present is relatively small. Estimated weights: Rosin, 500 pounds per barrel; turpentine, 432 pounds. Box cars are generally used for the transportation. Average lading, rosin 70 barrels; turpentine 67 barrels per standard car. Average weight of lading per car, rosin 35,000 pounds; turpentine, 28,844. 50,000 pounds of rosin has been found to be a fair average lading per car.

Of 72 cars of rosin which passed Albany, the average weight was 45,996 pounds; for the same period 13 cars of turpentine passed, average weight 53,623 pounds. In some exhibits have used average weight of 46,000 pounds on rosin, 54,000 pounds on turpentine. These figures represent fair average weight of these commodities.

From Atlantic ports to Cincinnati the rates are on rosin, 27 cents, and on turpentine 38½ cents, while from intermediate stations on the Atlantic Coast Line west of Savannah and north of Jacksonville rates on rosin range from 35½ to 36½ cents, and on turpentine from 52½ to 59 cents. We also found that the past history of the adjustment shows that the rate to Cincinnati from the South Atlantic and Gulf ports is the key rate, and during the past it has been thought proper that the rates from the South Atlantic and Gulf ports to Cincinnati should be the same.

The present rates to Cincinnati are from Gulf ports on [fol. 106] rosin, 27½ cents; on turpentine, 35½; and from South Atlantic ports, on rosin, 27 cents, and on turpentine, 38½ cents. The average distances to Cincinnati are, from the three principal Gulf markets, New Orleans, Mobile and Pensacola, 774 miles, and from the principal South Atlantic markets, Jacksonville, Brunswick and Savannah, 770 miles. The distances to Cincinnati from the stations located on southern trunk lines vary but slightly. The carriers decided that from all of the stations on southern trunk lines in the entire naval stores producing territory east of the Mississippi and north of the Jacksonville-River Junction line of the Seaboard Air Line Railway, the rates to Cincinnati should be the same. A rate of 33 cents on rosin, carload, and 57 cents on turpentine, carload, was fixed as the rate from this territory to Cincinnati. The establishment of these rates will necessitate a reduction in the present reasonable rates from a large territory intermediate to the ports which are on a much lower level than was found reasonable by the Commission in 61 I. C. C. 23-28. By appropriate comparisons will endeavor to show that these rates are not out of line with rates on naval stores to the east, where direct competition is encountered with coastwise vessels, nor out of line with rates on similar commodities.

We have proposed rates from Carolina territory to the lower Ohio River crossings, such as Evansville and Cairo, 4 cents on rosin, 7 cents on turpentine, over Cincinnati. The present differentials are 5 cents on rosin and 9½ cents on turpentine. Rosin and turpentine, carloads, are rated sixth class in southern classification. The rates from Evansville, Cairo, etc., to Carolina territory, exceed the sixth class rates from Cincinnati and Louisville by 6 cents [fol. 107] per 100 pounds. From Carolina territory to the St. Louis group we fixed the rates 9 cents on rosin and 15 cents on turpentine over Cincinnati.

The present rates from New Orleans are, rosin, 30 cents, and turpentine, 47 cents. From Jacksonville, 38½ cents and 60 cents, differences of 8½ cents on rosin and 13 cents on turpentine in favor of New Orleans. The Illinois Central Railroad, having its own rails from New Orleans to Chicago, decided that it would not carry rates from its stations to Chicago on Ohio River combination and accordingly

made the rates to Chicago from Gulf ports on rosin, 37 cents, and on turpentine, 60 cents. These figures are, on rosin, 4 cents, and on turpentine, 3 cents, higher than the suspended rates from the Gulf ports to Cincinnati. The average distances to Chicago are, from the three important Gulf ports, 896 miles, and from the three principal South Atlantic ports, 1,054 miles. The South Atlantic port lines do not feel that they can afford to carry their rates to Chicago on Ohio River combination as against the rates announced by the Illinois Central Railroad from Gulf ports. Chicago is itself an important market and is representative of a large consuming territory south and west of Chicago. Accordingly, the South Atlantic port lines determined to establish rates from South Atlantic ports to Chicago 4 cents on rosin, and 7 cents on turpentine, higher than from New Orleans and other Gulf ports.

[fol. 108] Certain of the Central Freight Association lines were unwilling to join in through rates to Chicago from South Atlantic ports on lower basis than Ohio River combination and reference to the suspended tariff discloses that we carry two sets of rates from South Atlantic ports, including the intermediate territory of origin to Chicago and points in that vicinity, one set of rates being on the differential basis, higher than from Gulf ports and the other set being on basis of Ohio River combination. To Indianapolis, Ind., the average distances are from the three principal Gulf ports 800 miles and from the three principal South Atlantic ports 860 miles. To the extent that the Central Freight Association lines would join, the Southeastern and Carolina lines have published rates to Indianapolis same as the Gulf ports. (Tes. 83-88.)

To the destination territory east of Chicago the suspended rates from Gulf ports are made on Ohio River combination and this basis was also observed from South Atlantic ports except that in no case were the rates from South Atlantic ports to this territory made higher than from Gulf ports.

The Illinois Central Railroad operates its own lines all the way direct from New Orleans to Chicago. It has been the position of the South Atlantic port lines that, in their own interest, as well as in the interest of the naval store shippers located on their lines, it is necessary for the South Atlantic port lines to preserve a certain relationship as be-

tween their rates from the southeast on the one hand and the rates of the Gulf port lines on the other hand, in making rates to Chicago. We have always had to have that in mind in fixing naval stores adjustment from the South Atlantic ports particularly.

[fol. 109] In the case of W. H. Barber Company, (Docket 10591) to which particular reference has been made, the grounds of the complaint, and the defendant carrier's answers, are fully set out in the Commission's report, 61 I. C. C. 23. In its decision of March 5, 1921, the Commission found that the rates assailed in that case were not unreasonable but that rates from certain points for the future would be unduly prejudicial to those points and unduly preferential to Jacksonville to the extent that they exceeded the rates on rosin and turpentine from Jacksonville to the same destinations by more than 3 cents and 6 cents per 100 pounds.

Exhibit 15 shows the present and suspended rates. The suspended rates are substantially less than the rates which we would have been justified in establishing under the Commission's order in Docket 10591. When the order in that case was received we seriously considered an increase in the rates from Jacksonville. At that time we had under way this general revision of naval stores rates and we did not feel that we could with propriety increase the rates from Jacksonville without at the same time revising the rates from the other South Atlantic ports and Gulf ports (88-93).

In the complaint of the Western Paper Makers Chemical Company vs. Director General, Docket No. 13157, an attack was made on the rates on rosin in carloads from southern points of origin east of the Mississippi River to Kalamazoo and Grand Rapids. The complaint alleged that the rates from the south to Kalamazoo are in excess of rates from the same points to Chicago, Milwaukee, Detroit, and Jackson. The O. & W. Thum Company intervened in support of the complaint and asked for rates to Grand Rapids from southern points not in excess of the rates to Milwaukee or [fol. 110] to Detroit. Witness has taken Jacksonville as representative of the South Atlantic ports and southeast, and New Orleans as representative of the Gulf ports and Mississippi Valley and has prepared statements showing the present and suspended rates to Kalamazoo, Chicago,

Milwaukee, Jackson, Detroit, Toledo, and Grand Rapids. The rates from Jacksonville and New Orleans are representative of the suspended rates but the rates from these origins are substantially lower than from the intermediate points of origin (Tes. 93-97).

The rates shown in the exhibit (No. 16) from Jacksonville to Chicago and Milwaukee, as the suspended rates, are those applicable via the C. I. & L., the C. & E. I., and the Illinois Central. The rates applicable via the other routes to Chicago are on rosin 47½ cents, and on turpentine 82 cents. Via the other routes to Milwaukee the rates from Jacksonville in the suspended tariff was on rosin 51 cents, and on turpentine 84 cents per 100 pounds. The Illinois Central, C. & E. I., and Monon are the only C. F. A. lines which have agreed to this differential basis. Possibly in one of the tariffs some other lines, C. B. & Q., and C. & A., were named. I used Jacksonville because my records show the rates from Jacksonville a little better than they did from Savannah. Jacksonville is the largest market of the two and represents the extreme distance. In a lot of other exhibits I have shown the distances from all ports. I am proceeding now to explain the effect of this proposed revision upon the rates to Kalamazoo and Grand Rapids, the points that were complaining in the other case. The suspended rates from Savannah are the same as they are from Jacksonville in each of these cases. Where the suspended rates made on combination on Ohio River crossings we used as factors south of the Ohio River our new rates, now sus- [fol. 111] pending, to the Ohio River, plus specific or proportions from the Ohio River crossings furnished to us by the C. F. A. lines. We have always considered our rates from the southeast and Carolinas to Ohio River crossings in the nature of proportional rates, and it is our view that rates constructed on basis of the rate south of the Ohio River as factors are reasonable. I assume that the lines north of the Ohio River will explain their part of this revision. In order, however, that the record may show what influence the changed specific had on the revision now under suspension, I filed my exhibit No. 17 showing the old and new specifics from Cincinnati to representative C. F. A. points. The specifics under the column headed "Former" are those reflected in the present rates. Those shown under the column "Present" are those reflected in

the suspended adjustment. As to whether it is a proportional as to points of origin as well as to points of destination, it is a proportional to a certain degree in that naval stores largely are not produced at the ports, but the situation we had to meet was this: here were the naval stores at Savannah, Brunswick and Jacksonville and they were moving to Cincinnati and Chicago via the water-and-rail routes, and we made our rates from Savannah and Jacksonville for the purpose of getting some of that business. If we had not fixed our rail rates so that the traffic could get out of there it would have gone out by water. The rates to and from the South Atlantic ports under the old adjustment were lower into the ports and also out of the ports than they were to the interior intermediate points. That is not a complete statement of all the specifics which were furnished to the southen lines by the northern lines. It shows that it is only from Cincinnati, representative of the Ohio River crossings, to representative destinations. I had not intended filing a statement showing all specifics to and [fol. 112] from all Ohio River crossings to all points of destination as they were furnished to us by the northern lines. The C. F. A. lines are here. I assume they will probably do so. I do not know, however. I would much prefer that you get it from the lines who are represented here who fixed these proportions. In filing this exhibit I was merely trying to show just how we arrived at these through rates, the suspended rates.

Exhibit No. 18 is a statement showing the present and suspended rates on rosin and turpentine in carloads from representative points in southeastern and Carolina territory to representative points in C. F. A. and western trunk line territory (Tes. 105). The proposed rates are published as through rates. The present rates, in practically every case, are published by the sectional plan. They show the proportions to the River and the proportions beyond. There is only one important exception and that is the rate on rosin from South Atlantic ports to Chicago. All of that was covered by my testimony this morning in connection with the history of the rates. That sectional plan was not resorted to to take care of the territory intermediate to South Atlantic and Gulf ports from which he had no through rates. It was in the tariff primarily to cover the South Atlantic ports. It was only in the tariff covering the South

Atlantic ports, and we obtained through rates from our intermediate territory to the destinations north of the River by virtue of having consolidated the two tariffs. It is a through rate from the South Atlantic and Gulf ports to Chicago, while on turpentine it is a combination rate. To Pittsburgh, from South Atlantic ports, that is a through rate. I haven't got the tariff from the Gulf ports but my understanding is it is a through rate. To Cleveland it is a combination rate both on Rosin and turpentine. Section 3 [fol. 113] contains through rates from Gulf ports also common and local points in the States of Alabama, Louisiana and Mississippi to points in the States of Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana and Michigan. Generally speaking, from the Mississippi Valley there are through rates to destinations specified in the tariff though I don't know that it covers all points in C. F. A. territory. To Milwaukee from South Atlantic ports we have a through rate on rosin but not on turpentine. In our current tariff practically all of these rates are arrived at by taking the rate to the Ohio River and adding certain proportions beyond which are published separately in the tariff. The C. F. A. lines are agreed to the through rate basis constructed by the use of a differential. The distance from Savannah to Buffalo via Cincinnati or Kenova is 1153 miles, via Richmond 1053. From New Orleans the short line distance via Cincinnati is 1263 miles. The distance from Jacksonville to Buffalo via Richmond is 1191 miles as against 1263 miles from New Orleans. The present rate from Fayetteville, N. C., and other points in Carolina territory to Central Freight Association points, were in most cases made by using the local rates to Virginia gateways plus the specifics or proportional rates beyond. The rates from Carolina territory here under suspension are in some cases higher than those which we will ultimately establish.

Exhibit 20 shows rates from Jacksonville to Indianapolis, Chicago and Milwaukee which are the so-called differential rates. The rates via B. & O., Big Four and the Pennsylvania are higher than the rates shown in this exhibit.
[fol. 114] Jacksonville's relationship with New Orleans has been very much improved (116-122). Taking the rates present and as proposed to Chicago, the differences as between Jacksonville and New Orleans today are, on rosin, 8½, turpentine 13. In the suspended tariff the differences

are, on rosin, 4, on turpentine 7. To Kalamazoo, for example, we will have the same rate from both Jacksonville and New Orleans under the proposed adjustment.

Exhibit 24 compares the present rates from Savannah and Jacksonville to the destination territory north of the river here involved, in effect, via the M. & M. T. through North Atlantic ports, and the present and suspended rates via all-rail.

Exhibit 25 compares the present and suspended rates on rosin and turpentine from representative shipping points on the Atlantic Coast Line to Cincinnati, Chicago and Kalamazoo with the present rates on lumber, carloads, from and to the same points. The purpose of this exhibit is to show that the suspended adjustment on naval stores is in harmony with the existing adjustment on lumber as to the groupings of points of origin.

Exhibit 26 is a similar statement comparing the present and suspended rates on rosin and turpentine with the existing rates on cotton; the origin grouping on cotton is the same as is proposed on rosin and turpentine.

Exhibit 27 is a similar statement comparing the present and suspended rates on rosin and turpentine with the present rate on vegetables, the purpose of which is merely to show that the origin grouping is the same on rosin and turpentine as it is on vegetables (Tes. 122-131).

Exhibit 27 is similar and deals with the rates on oranges.

Exhibit 29 compares the present and suspended rates with [fol. 115] the present class rates which would apply in the absence of commodity rates. That deals with the reasonableness of your proposed rates.

Exhibit 34 shows how rates on rosin and turpentine are carried in the suspended tariff from representative points in the Southeast and Carolina territory to Ohio River crossings and Central Freight Association territory compared with the rates on the same commodities from Southern points to Eastern destinations.

Exhibit 37 is a statement showing the suspended rates on rosin and turpentine, carloads, from Dothan, Alabama, to Chicago, compared with the rates on glucose, carloads, from Chicago to Dothan, Alabama, published in accordance with order in Docket 10867, 60 I. C. C. 203.

Exhibit 38 compares the suspended rates on rosin, crude wood oil, pine gum, pine pitch, and other articles included

in the rosin list, with the rate which the Commission found not unreasonable or unjustly discriminatory applicable on sulphuric acid in tank cars, minimum 80,000 pounds, from southern points to Hopewell, Va., 57 I. C. C. 54.

Exhibit 39 compares the rates and per car mile earnings on turpentine, carloads, with the present rates on alcohol from New Orleans to C. F. A. points. The suspended rates on turpentine yield, generally speaking, lower per car mile earnings than do the rates on alcohol from New Orleans.

Exhibit 40 shows the distances and suspended rates on rosin and turpentine, carloads, from Jacksonville to representative points of destination compared with the rates on petroleum and petroleum products from Jacksonville to the same destinations. We have recently established commodity rates on petroleum and petroleum products from South Atlantic ports to Cincinnati and Central Freight Association points.

[fol. 116] Exhibit 41 is a comparison of the present and suspended rates on rosin and turpentine per car mile earning thereunder from representative shipping points to representative destinations compared with the rates and per car mile earnings on lubricating oil from Franklin, Pa., to South Atlantic ports, Atlanta, Macon, and Augusta. There is a very large movement from Franklin to these points.

Exhibit 42 compares present and suspended rates on rosin and turpentine from and to representative points with the existing rates on Petroleum and petroleum products from and to various points in Southeastern and Carolina territory.

Exhibit 46 compares the suspended rates on rosin and turpentine from representative shipping points to Cincinnati and representative destinations north of Cincinnati with the present rates on scrap iron from Savannah to Eastern port cities.

Exhibit 47 compares the suspended rates on rosin and turpentine from Jacksonville, Valdosta, and Dothan, to Cincinnati and representative points north of the Ohio River with the present rates on hides, carloads, from southern points to Ohio River crossings.

Exhibit 48 compares the suspended rates on rosin and turpentine from Jacksonville, Valdosta, Dothan and

Fayetteville to representative points with the rates on lard compound, from the southern producing points to Ohio River crossings and points beyond. Our lumber rates from this South Georgia and Florida territory to Chicago, for example, are heavily depressed rates. They have been subjected, probably, to keener competition than any of our lumber rates. If you took the lumber rates from this same territory to C. F. A. points east of Chicago you would find them on a much higher level than the Chicago rates. That is illustrated by the exhibit itself. Take, for example, the rate from Jacksonville to Chicago is 39 cents; to Kalamazoo [fol. 117] it is 43½ cents. The rates, generally speaking, on lumber from the South Georgia producing points to C. F. A. points, particularly Chicago and that section are lower than our rates on lumber from the same producing section to the east. The Commission has, on various occasions, dealt with our lumber rates from this territory to the Ohio River and the north. The last large case in which they were considered was I. & S. 745. Several reports of the Commission go into some detail as showing how depressed the lumber rates are from South Georgia to the west. I feel that this comparison of the actual rates and earnings on rosin with the rates and earnings on lumber from this same territory to the same points of destination is very strong and convincing evidence of the reasonably low character of our proposed rosin rates.

Exhibit 55 shows miscellaneous commodities that move from Jacksonville to Cincinnati and other northern destinations for the purpose of showing how the road's revenue under this rosin and turpentine adjustment are compared with the general run of rates and revenues on through commodities moving between the same points (Tes. 159-164). The carload movement of miscellaneous commodities from C. F. A. territory into our section of the country is very much in excess of the movement of miscellaneous commodities in carloads from our territory. It is very difficult to find miscellaneous commodities moving out of our territory into C. F. A. territory.

Exhibit 58 shows suspended rates on naval stores from Jacksonville to representative destinations compared with the rates on some of the commodities which moved in the reverse direction during August, 1923. From Jacksonville to Chicago the suspended rate on rosin and turpentine

yielded respectively $118.60 and $361.80 per car. We handled a carload of canned goods from Chicago to Jacksonville in August, weight 42,000 pounds, rate 93 cents, per [fol. 118] car earnings $390.60. I have used everything that moves that I know of. I took every carload of any commodity that I could find moving out of our territory. You have no right to say that I am loading up this record with 62 exhibits, 75% of which are unfair to the protestant. I have undertaken to show all movements for a typical period between the points.

Exhibit 63 shows the present and suspended rates on articles other than rosin and turpentine as covered by the suspended tariffs applicable from representative southern shipping points to representative destinations on and north of the Ohio River. This exhibit shows the range of the rates on commodities other than rosin and turpentine, and what we are doing in the way of straightening out the rates on those commodities.

Exhibit 64 shows the present and suspended rates on rosin and turpentine less than carload from our Georgia and Alabama stations to Cincinnati and Chicago (Tes. 171-178), except from Savannah and Jacksonville we have no l. c. l. commodity rates today. We have a l. c. l. commodity rate on turpentine from Waycross, Georgia. The country production of naval stores in Carolina territory is a thing of the past. There is no movement at all, to speak of, from the country points in the Carolina territory. I have undertaken to compare these suspended rates with the rates on other commodities and revenue on other commodities, selecting practically every variety of commodity that could be found that moves in this territory, and in comparison with the rates and revenues on other commodities I feel that the rates as proposed in this suspension are reasonably low rates. This readjustment, generally speaking, involves some advance of the rates from South Atlantic ports proper and reductions of the rates from interior shipping points in the southeast. Having in mind the actual movement of the traffic from the different points of origin, [fol. 119] this proposed adjustment represents a revision designed largely to preserve the existing level of the carrier's revenue. It may be that there will be shown an increase in our revenue, but we have to bear in mind that we are making a readjustment, are wiping out Fourth Sec-

tion difficulties and violations and really lining up the rates from intermediate shipping points with the rates from the ports, and there will probably be a material change in the flow of the traffic, and we feel that the rates we have suggested are fair and reasonable. They are low, if anything, and in the end they will no more than preserve our present revenue. As far as the carriers concerned go, there has been a rather pronounced tendency to a change, in the more recent years, in the flow of this traffic, whereby the movement is now more than ever, from the interior points direct, rather than though the ports.

As far as we know there are no violations of the Fourth Section at destinations. We have undertaken, in the suspended tariffs, not to create any Fourth Section violations at destination. That feature, however, will probably be dealt with more in detail by the destination lines.

[fol. 120] October 2, 1923. X-Ex. The only increase that will ever result under this revision will be one and a half cents on rosin, and that will be to the Ohio River crossings, and to the points where you have a through rate from Jacksonville today. That is not necessarily where it is made on the combination by use of the sectional portion of the tariff. Take St. Louis, for example. All the rates from Florida will be reduced one half cent on rosin. Take Indianapolis—to St. Louis all the rates from Florida south of the Seaboard, except the Perry Branch of the Coast Line, will be reduced 3½ cents. To Indianapolis all of them will be reduced 4½ cents, and to Kansas City they will all be reduced 5 cents. To Milwaukee they will all be reduced 4 cents; to Chicago all the rates from Florida will be reduced 1 cent on rosin. To Buffalo the rates will be increased. They will be increased to Kalamazoo.

I don't know whether it is any larger consuming center than these other places or not. It will be increased to Kalamazoo, on rosin, 5 cents; instead of 1½ to the Ohio River, it appears to be the case that it will be increased 5½ cents to this large consuming market. 3½ cents increase at Cleveland. I haven't Detroit. The rates will be increased on turpentine from this same territory to the Ohio River; 9½ cents to Cincinnati; 2½ cents to St. Louis. I don't think there are any reductions whatever on turpentine to Ohio River points. I think they are all increases. I think they ought to be increased. (Tes. 196-208.)

I don't know if there is any reduction to the territory north of the Ohio River from these Florida producing sections, on turpentine. The rates from Jacksonville, when from this Florida section on turpentine, are made 9 cents per 100 pounds less than the revised rate from Jackson-
[fol. 121] ville. It is just a question of taking the present rates and the suspended rates, to find out whether or not they are reduced or increased. I have not made any comparisons on them, other than those shown in the exhibit. You understand, when we started out on this revision, we did not necessarily pay any attention as to whether or not this rate would be increased, or that rate would be reduced. We tried to fix reasonable rates; and, as to whether or not a rate was increased or reduced, that was something else.

It was not our idea, in undertaking this revision to materially increase the revenues of the carriers on rosin. I am afraid we did not get them high enough to maintain our present revenues.

Chicago and points west will be reduced just to make a general statement and east of Chicago rosin rates from south of Jacksonville will be increased.

In the preparation of our case I conducted an investigation throughout the naval stores producing territory in order that I might determine what percent of naval stores was shipped direct from the interior points, as contrasted with the shipments from the ports — to the territory involved in this proceeding. I have undertaken to show representative movements, and I would say that, taking the coast line as representative, that to C. F. A. territory today, about 50% of the movement to C. F. A. is from points other than ports. It is direct. I have already furnished that information. I filed a statement to that effect.

We have made no application for any Fourth Section relief at destination points. We knew, before these rates were published, and have known for two years, of the complaint by the Western Paper Makers Chemical Company, alleging discrimination, Kalamazoo vs. Chicago.

I do not think we have removed the complaint, because we have not established the same rates to Kalamazoo as to Chicago, and that is the basis of the Kalamazoo com-
[fol. 122] plaint as I understand it.

Q. Then in justification of the new rates, you have introduced a number of exhibits showing the rates to Kala-

mazoo, Cincinnati and Chicago, including rates on oranges, class rates, etc.

A. I did not introduce those exhibits for the purpose of showing the reasonableness of the suspended naval stores rates. Those particular exhibits, the orange and class rate exhibits, were introduced for the purpose of showing that in the suspended revision we had to group the origin territory in connection with the naval stores rates just as we had on other commodities.

Q. Then, that testimony was not given as a defense for the adjustment at destination.

A. You mean as to the grouping of destinations.

Q. Yes.

A. Well, I did not have that particularly in mind, although I think the rates shown in those exhibits indicate that we have not done substantially different in the naval stores revision than the adjustments on these other commodities'' (Tes. 229-237).

I don't think we rely on those exhibits as justification for the same destination adjustment on rosin.

As to what justification we offer for the relative adjustment at destination, Kalamazoo, vs. Chicago: As I explained, the South Atlantic port lines feel that they should have rates to Chicago fairly aligned with the rates from the Gulf ports, and we make our rates to Chicago higher than the rates from the Gulf ports. To Kalamazoo we make the rates from South Atlantic ports the same as from the Gulf ports.

Our justification is this, that we feel that we are entitled to a rate to Chicago which will enable our shippers to get into Chicago in competition with the shippers at the Gulf ports. We feel we are justified in doing that. We do not feel that, having met that competition at Chicago, we are under any obligation to carry it on to some other point where that competition does not exist.

[fol. 123] As to what condition at Chicago makes it necessary or makes it important that we put rates into there on the basis we have put them in.

The existence of the Illinois Central's one-line haul and the fact that they established a rate from New Orleans to Chicago, makes it necessary for us to—It is to enable our shippers to get into Chicago and that surrounding territory on a fair basis with New Orleans.

"Q. Do you consider the volume of tonnage a factor in the making of the rates?

A. I don't know as we would do this thing if there was only one car. We would have a right to do it, I think, if we wanted to.

Q. That was not the question, Mr. Doss. Is the volume of tonnage a factor which leads you to make the adjustment at Chicago which you deny to Kalamazoo?

A. It is the competition with New Orleans, and, of course, if there was no movement, we would not be interested in the rate to Chicago.

Q. It either is or is not the volume of movement that influenced you. Was it or wasn't it?

A. Yes; it is the fact that shipments are moving, and we want a rate that will——

Q. (Interposing.) It is the volume of movement that interested you?

A. Yes; it is the shipments that move."

The Illinois Central Railroad carries a higher rate on naval stores from New Orleans to Kalamazoo than it carries to Chicago. The distance via the route of the Illinois Central to Kalamazoo is substantially greater than the distance to Chicago.

As to why, in some of these exhibits, setting forth comparisons, that I have not shown Grand Rapids, Mich., and Milwaukee, Wis.:

In the short time we had it was not possible to deal with every origin and with every destination. We took what we consider, and what I think are, fairly representative points.

I have been aware of the existence of this complaint and [fol. 124] insistent complaint, upon the part of the destination interests in respect to certain alleged maladjustments and unreasonableness of rates, and still, I do not here set up any comparisons at Milwaukee and Grand Rapids.

I think, however, that comparisons showing Kalamazoo and Chicago are fairly representative. I know what the rates are to Grand Rapids and to Milwaukee. They are shown in the tariffs.

As to whether we would be willing to agree to the elimination of existing Fourth Section violations at Grand Rapids, as I have stated we would be at Kalamazoo, if they were

brought to our attention; it is not a question of our being willing to eliminate them. If there are any, we would have to eliminate them, or get specific relief to continue them.

"Q. However, so far as this case is concerned, do I understand that you are not offering any defense of the proposed rates to Grand Rapids?

A. I think I am defending them.

Q. Where is your defense?

A. All th-ough my testimony has been defense.

Q. Not in respect to Grand Rapids. Where is your defense of Grand Rapids? I am asking you specifically about that.

Q. My whole testimony has dealt with the rates to Grand Rapids and the rest of these destinations.

Q. Your testimony has dealt with the rates to other points, but it has not dealt with the rates to Grand Rapids and Milwaukee, in any substantial measure?

Q. The situation at Grand Rapids is not any different from what it is at the other Michigan points.

Q. Do you know that to be a fact?

A. The rates speak for themselves. The exhibit shows the rates.

Q. Where are the rates? There are no rates to Grand Rapids, and that is why I am asking you. Where is your defense here? If you have not any, just say so, and that will satisfy me.

Mr. Gwathmey: The record will speak for itself, will it not?

By Examiner Carter:

Q. Assuming that there are Fourth Section violations at Grand Rapids, have you any justification to offer for those [fol. 125] departures or violations?

A. No, sir" (Tes. 237-242).

I want it clearly understood that there was no ulterior motive in selecting Kalamazoo and Chicago and not selecting the others. It is humanly impossible to take all these points. The rates will show for themselves, and I think what I have said about Kalamazoo is equally applicable to Grand Rapids.

Redi. Exa.:

It is a fact that the amount of naval stores brought into the interior of Florida, concentrated at Jacksonville, and thence reshipped by rail to C. F. A. destinations or other destinations involved in this case, constitute a very small percentage of the naval stores handled at Jacksonville. I think it would amount to about 10% (262).

Re x exa.:

I have not attributed the very small movement I stated existed in naval stores from Jacksonville and Florida points to northern and western points to anything. It seems to me it would naturally follow that they did not need any more naval stores. I didn't say there was no movement.

J. E. Bryan, Traffic Manager, Wisconsin Traffic Association, representing pulp and paper mills in Wisconsin and the Upper Peninsula; also Minnesota and Ontario Paper Company of Minnesota, testified substantially as follows: My first two exhibits need no explanation. With respect to the history of the rates, from points in the rosin producing territory of the south and southeast rates have been made with due consideration to the sum of the intermediates based on Milwaukee, back as far as 1913. Present rates to Milwaukee from Gulfport, Mobile, Pensacola, and certain other points in the first four columns is 33 cents. The proposed or suspended rate is 40 cents, an increase of 7 cents. [fol. 126] In the last column the history of the rate from Milwaukee to the Fox River destination is indicated. The present rate from Milwaukee to Fox River group destinations is 8½ cents, making a total of 48½ cents (Tes. 267-270).

Exhibit "D" shows the through rates, present and proposed. To Milwaukee the present through rate is 42 cents, the proposed rate is 54 cents, an increase of 12 cents. By using the Milwaukee combination of 40 cents and 8½ we have a proposed combination of 48½ cents, or an increase of 5½ cents. If the carriers will establish through rates to Wisconsin points based on the increased rate to Milwaukee, plus the available rate beyond Milwaukee, it will be acceptable to us.

X ex.:

My clients are a large number of very important consumers or users of rosin in Upper Michigan. They are the purchasers of this material. The freight is ordinarily paid by the consignee. We are interested in rosin entirely. Our principal tonnage on rosin in the past has come from Pensacola, Mobile, Jacksonville and Savannah. I do not know of any movement at the present time by rail and water through the North Atlantic ports to our territory.

[fol. 127] C. L. Hinnant, Assistant General Freight Agent, Norfolk Southern Railway, appearing simply to request Fourth Section relief, testified substantially as follows:

Exhibit 69 is a blueprint showing the territory reached by the Norfolk Southern in heavy white line and all representative destinations in C. F. A., Buffalo and Pittsburgh territories. We are asking for Fourth Section relief to participate in the traffic via Pennsylvania Railroad, Chesapeake & Ohio, Richmond, Fredericksburg & Potomac and Baltimore & Ohio beyond Norfolk to meet rates that are applied via the other routes through the Cincinnati gateway.

Exhibit 70 shows from representative origins to representative destinations, distances and the rates and the per ton mile revenue, the equi-distant points of origin, the rates and so forth as required by the Commission in presenting Fourth Section applications. The tonnage handled over the Norfolk Southern is light compared to the tonnage handled over the Class 1 roads. The Norfolk Southern is not asking for Fourth Section relief because of its circuity but rather because of the operating and traffic conditions as shown in Exhibit 71. The average number of ton miles revenue freight, per car mile, on the Norfolk Southern for the year ended December 31, 1921, was 17.12 as against an average for the other Southern District Class 1 roads of 26.27. Freight revenue per mile of road was $6,307 as compared with $14,670 for other Southern District Class 1 roads. The operating revenue per mile was $8,586 as compared with $19,980 for other Southern District Class 1 roads (Tes. 277-279).

W. D. Cook, General Freight Agent, Gulf & Ship Island R. R., appeared on behalf of all of the Mississippi Valley carriers except Louisville & Nashville and New Orleans & North Eastern and testified on the following subjects: — principles underlying the readjustment of rates on naval stores from points in Mississippi Valley territory except [fol. 128] points on L. & N. and N. O. & N. E., as published to become effective September 1, 1923, and which were suspended until December 30, 1923. Necessity for revision in the rates resulted from following condition, viz:

1. To so realign the rates from the interior Mississippi Valley territory as to be no higher than from more distant Gulf ports; and secondly, conform them to the provisions of the Fourth Section.

2. To harmonize the rates from Mississippi Valley territory with rates from the southern territory, i. e., points in Georgia, Florida and the Carolinas.

3. To correct inconsistencies and maladjustments growing out of piecemeal adjustments that have resulted from time to time and to satisfy complaints from interested shippers.

4. To provide rates to new consuming points to which no through rates were published.

Efforts were made to so adjust the rates from southern shipping points to destinations north of the Ohio River as to insure the proper proportions accuring to the carriers in official classification territory. In many instances the through rates from southern territory to destination in official classification territory were originally constructed on combination by adding to the rates to Ohio River crossings proportions accepted by carriers operating beyond the Ohio River crossings. Other witnesses appearing on behalf of the carriers in official classification territory will explain the necessity for the changes in proportions which should accrue to the carriers in official classification territory (Tes. 279-282).

Exhibit 74 shows rates and distances from the Gulf ports as compared with rates and distances from the South Atlantic ports; also the present rates from representative producing points in the Mississippi Valley to representative

[fol. 129] destinations in the territories covered by Tariff I. C. C. A-424. The rates on other traffic from the Gulf as from the South Atlantic have been proposed by the carriers in I. C. C. Docket 13494, Southern Class Rate Investigation, which is now before the commission. Having fixed rates to Cincinnati, rates to Louisville, Jeffersonville, Owensboro, Henderson and Evansville were made on a relative basis observing substantially the present relation to Cincinnati. The rates to St. Louis where now higher than to Louisville were made the same as the rates to Louisville, which is the recognized basis for constructing rates from the Mississippi Valley, this relationship having been disturbed by Ex parte 74 and approved by the Commission, 84 I. C. C. 306. Generally speaking, there are no commodity rates to Cairo proper. It is proposed to make rates to Cairo the same as to Louisville, Owensboro, Henderson and Evansville. At the present time certain proportional rates are published to Cairo to apply on traffic for points beyond. As no other proportionals are published from the Mississippi Valley to other Ohio River crossings, it is proposed to cancel the proportional rates to Cairo; to Chicago and other points in Illinois Freight Association territory the suspended rates are substantially the present differences over St. Louis (Tes. 284-285).

It should also be borne in mind that the present rates from Gulf ports to Ohio River crossings, St. Louis, Chicago, etc., are depressed.

The suspended rates from interior Mississippi Valley territory to Chicago, Indianapolis, Milwaukee, Peoria, Springfield, and other points in Illinois Freight Association territory will result in reductions ranging in amounts from 3½ cents to 4 cents per 100 pounds, whereas substantially no changes are proposed in the rates on turpentine from interior Mississippi Valley points to Illinois Freight Association territory where rates are now in effect. To points in the western trunk line committee territory, such as Duluth, [fol. 130] St. Paul, Omaha, and Kansas City, the rates have been unified from all Mississippi Valley origins. At the present time no uniformity exists in the rates from Mississippi Valley territory to those destinations, and while the proposed rates in many instances result in no change, in other instances there are some increases, and in still other instances there are reductions (Tes. 287-289). Rates to

points in C. F. A. territory were made on Ohio River combination using the revised rates to Ohio River crossings plus proportions desired by the C. F. A. roads therefrom. The proportions from the Ohio River crossings to C. F. A. territory will be explained by other witnesses. To Gulf ports rates were readjusted in such a manner as to provide substantially the same level of rates from all of the producing points in the Mississippi Valley territory to all of the Gulf ports for substantially similar distances and service. While some slight increases are proposed, substantial reductions will also result, as will be seen on an examination of the exhibits.

I did not participate in the hearing in I. C. C. Docket No. 13157, therefore am not familiar with what transpired at the hearing. I understand the complaint in that case alleged discrimination in favor of Chicago, Milwaukee, Detroit and Jackson against Kalamazoo. In working out this revision the carriers followed substantially the existing principle, in other words, the present rates from the Mississippi Valley to Chicago are less than combination, also less than the rates to Kalamazoo, and so far as I know, there has never been any definite or fixed relationship in the rates on naval stores to Chicago and those to Kalamazoo and other C. F. A. points. As I have previously explained, the suspended rates to Chicago are made substantially the present differences over St. Louis and rates to Milwaukee are made substantially the present differences over the rates to Chicago. This was approved by the Illinois Lines. Kalamazoo, Detroit and Jackson are in C. F. A. territory [fol. 131] and as I have previously stated, the rates to destinations in the C. F. A. territory were made on Ohio River combination, using the suspended rates to the Ohio River plus the proportions desired by the C. F. A. carriers beyond. The suspended rates from the Mississippi Valley to Kalamazoo, Detroit and Jackson are the same, although higher than to Chicago. Further, Kalamazoo is not intermediate to Chicago on traffic from the Mississippi Valley. Further, that the distance from New Orleans to Chicago is approximately 912 miles, whereas the distance from New Orleans to Kalamazoo is 1,095 miles over the route through Cincinnati, the latter being obtained from the Official Guide, using southern railway distance, 835 miles, to Cincinnati plus 260 miles via the Pennsylvania beyond. Further, the

distance from New Orleans to Kalamazoo via Chicago and the Michigan Central is 1,053 miles. In other words, Kalamazoo is not intermediate to Chicago from the Mississippi Valley. I am not familiar with the report of the Commission in Docket No. 13157.

The carriers first decided on the rates on rosin and turpentine and made no effort to apply the rates on other articles until after conference with the shippers. The shippers suggested the grouping of the several by-products and submitted evidence as to the reason for the said groupings, which, after investigation, were substantially adopted. The purpose of the Chicago conference held by the C. F. A. lines and the shippers was to have the same commodity groupings adopted in connection with the through rates to the C. F. A. territory as had been adopted by the southern carriers to the Ohio River. The basis for rates to points beyond the Ohio River was furnished by the destination lines. If any violations occur at points of destination they should be called to the attention of such lines. As to why the rates on rosin to Passaic, N. J., were not increased, while rates to Kalamazoo from Gulf ports were increased [fol. 132] 13 cents, I have previously explained why the rates to Kalamazoo and other C. F. A. points were increased. Passaic takes New York rates. Under the proposal to Kalamazoo the rate is 47 cents and to Passaic 52½ cents. 5 cents difference on rosin (Tes. 296-299).

X-ex.:

I am speaking for the Illinois Central as well as other lines in the Mississippi Valley, with the exception of the L. & N. I presume you might call the Illinois Central the rate-making line on naval stores between New Orleans and Cairo and New Orleans and Chicago. The Illinois Central is the direct line from there. They do not make the rates to Evansville, Louisville and Cincinnati. We undertook to preserve the present differences, Louisville under Cincinnati, and Evansville under Cincinnati, as existed in the rates today. The carriers in this adjustment made Cincinnati the key crossing because of its distance from the South Atlantic ports being substantially the same as from the Gulf ports. Then as we go west of Cincinnati we try to preserve the present differential under Cincinnati to the lower crossings. I don't know what scientific basis or

reasons they had for selecting 33 cents on rosin and 57 cents on turpentine to Cincinnati both from the South Atlantic and the Gulf ports. The rates from all points indicated on this map, Exhibit 73, to Cincinnati and to points beyond are to be the same. The proposed rate from Gulfport is the proposed rate from Laurel, for instance. The distance from Jacksonville to Mobile for our line involves a two-line haul, 185 miles via the shortline. As to whether I think it is proper adjustment to make a group 189, or nearly 200 miles, in extent of origin but it would be improper at destination: As far as the destination territory is concerned we have depended upon the lines beyond the River to give us the grouping that they wanted in that territory.

[fol. 133] Q. Well, I understood you to say that your defense for higher rates at Kalamazoo than at Chicago was due to the difference in mileage, which is substantially less than the distance from Jackson to Mobile, and I was wondering by what process of reasoning you arrived at different conclusions at points of destination than at points of origin.

A. Well, we did not give that illustration of mileage there as a justification for the rates. We have done it in explanation of the fact that there was no Fourth Section violation from the Mississippi Valley that required carrying the Chicago rate to Kalamazoo. I did not make the statement that the difference in distance justified the difference in rate. I was only bringing out the Fourth Section application which was the basis, I understand, of this Docket 13157.

We proposed a rate to Chicago of 37 cents and to Kalamazoo of 47½ cents. We are not undertaking to justify the difference of 10½ cents, Kalamazoo over Chicago, from the Gulf ports. The rates are published on the basis furnished by the destination lines—the grouping and everything. I have not undertaken to justify that difference of 10½ cents in this proceeding. I do not know what the difference is in first class rates from New Orleans to Chicago vs. Kalamazoo. I don't know as the difference in rates on rosin as great as the difference in the first class rates would be a proper measure for them. As to whether I agree with Examiner Smith as to the Fourth Section violations

at point of destination, I have not see his report on it (Tes. 310-313).

Pensacola is a Gulf port and is not counted as one of the Mississippi Valley Gulf ports. I should think the natural rate for business from Pensacola to Chicago would be the L. & N. through Cincinnati. That would give the L. & N. the long haul. I think that would also be the route from [fol. 134] Pensacola to Kalamazoo and also the proper route to Grand Rapids as well as Milwaukee.

Q. Then if there are now routing instructions in the tariff, isn't it plain that any business in connection with the Michigan Central to Chicago or Detroit on rates less than to Kalamazoo are in violation of the long and short haul clause?

A. It might be from Pensacola but I don't think that exists from the Mississippi Valley because the shortline routes would not be through Cincinnati to any of these points (Tes. 313-315). I have no information as to the movement from Pensacola and stated it was one of the Gulf ports. I didn't state I recognized Pensacola as the principal Gulf port in so far as naval stores industry was concerned. As to whether, if we are justified in applying a group adjustment or blanket adjustment at points of origin having a spread of 200 miles I still think that there should be a difference in the rate from the Gulf ports, Pensacola to Kalamazoo over Chicago: I do. I do not think that the conditions are as controlling from Pensacola to Kalamazoo as from New Orleans to Chicago. The direct line of the Illinois Central makes the rate from New Orleans to Chicago but not from Pensacola. There is no other line in Pensacola beside the L. & N., which I represent. The proposed revision of rates contemplated an increase of 6 cents from the ports to Cincinnati on rosin and an increase of 7 cents to Chicago and 13 cents to Kalamazoo. I don't show Milwaukee in my exhibits.

"Q. Now, if there be any justification for any advance, you said, as I understand it, that you could not say what the basis was for the 33 cent rate,—but if there be justification for any advance what justification is there for double the advance at Kalamazoo as at Chicago or Cincinnati?

A. Well, from New Orleans to Chicago there is a one-line haul on the Illinois Central Railroad. If you get over to

Kalamazoo you get into another territory, involving hauls over several lines."

[fol. 135] There was always a one-line haul from New Orleans to Chicago; that condition has not been changed by the publication of the tariff. There has been very little change in the rate to Chicago. The change in the rate to Chicago was based upon the change in the rate to St. Louis, as we preserved practically the same differential, Chicago over St. Louis, as in effect today. The advantage that Chicago enjoyed, if any, due to the single line haul to New Orleans, was effective in the old rates. The necessity for doubling the increase at Kalamazoo was brought about by an increase in the arbitraries furnished by the C. F. A. lines, on which these rates were built up, over the Ohio river. As to how much the arbitrary, Cincinnati to Kalamazoo, was increased; I haven't got those before me. I presume though that the C. F. A. line representative can explain that to you.

Q. I will give it to you. For your own information, the old specific over Cincinnati was 12 cents and it is now 14½ cents. That is a difference of 2½ cents?

A. Yes, sir.

Our increase from the ports to Cincinnati is 6 cents, so that our total increase, due to the increase to the river and increase in the specific beyond, is 8½ cents. As to why we are increasing the rate to 13 cents—the necessity of a greater increase at Kalamazoo than at the other points: I don't recall; I don't know just what that is (Tes. 315-320.)

As between the South Atlantic ports and the Gulf ports, there was no necessity of changing anything in order to preserve the parity that already existed on rosin. The increase on rosin to Chicago from the Gulf ports is 7 cents, and to Grand Rapids it is proposed to increase the rate 13½ cents. I am not undertaking to justify that increase to Grand Rapids of more than double the increase to Chicago. We made the rates over Ohio River; the arbitraries furnished us by the C. F. A. lines. I am not undertaking [fol. 136] to justify the proposed through rates published in this tariff.

L. L. DRESCHER, employed by Louisville & Nashville Railroad as Assistant to the Vice President in charge of traffic, testified substantially as follows: For a number of years duties have been such as to familiarize himself with the adjustment of rates of Louisville & Nashville in the territory which it serves, including the rates on naval stores. Is familiar with the rates involved in this proceeding and the proposed revision of naval stores rates in so far as it affects the L. & N. In the revision of rates on naval stores which we sought to make effective September 1 of this year we made the rates from Pensacola, Mobile, Gulfport and New Orleans to Cincinnati the same as the revised rates of the other Gulfport lines which were in turn lined up with the revised rates from South Atlantic ports. Under this basis our 27 cent rate on rosin became 33 cents, and the 35½ cent rate on turpentine became 57 cents. In making the same rates on naval stores from all of these points to Cincinnati the carriers have adhered to the adjustment that applies on classes and commodities generally. The rates from the Gulf ports to other Ohio River crossings west of Cincinnati and to St. Louis were made on the same percentage relationship, to first class, as borne by the revised rosin and turpentine rates to Cincinnati to the first class rate to that point. This resulted in lower rates from the Gulf ports to Louisville, Evansville, St. Louis, than to Cincinnati, and this, too, is in line with the general adjustment of rates, which situation is shown in the statement Exhibit 79. This is a statement of the class rates from New Orleans, Mobile and Pensacola to Cincinnati, Louisville, Evansville and St. Louis. It shows, also, that in making the rates on naval stores from Pensacola to these crossings the same as from [fol. 137] New Orleans and Mobile the same adjustment has been followed as obtains with respect to other traffic.

Exhibit 81 shows the present and suspended rates to representative northern points. In the revision of rates to these points there have been some substantial reductions. This will be noted especially in connection with the rates from the Pensacola and Atlanta division and the Alabama and Florida division to Indianapolis, Chicago, and Milwaukee. To Indianapolis the reduction in the rate on rosin amounted to as much as 8 cents per 100 pounds, and on turpentine 4 cents. To Chicago the maximum reduction in the rosin rates was 10 cents and on turpentine 12½ cents.

To Milwaukee the maximum reduction in the rosin rates was 9½ cents and on turpentine 12 cents, and these also occurred at Laurel Hill. The rates from practically every station on the P. & A. and A. & F. divisions to Chicago and Milwaukee were reduced and there have also been numerous reduction in the rates to the other destinations shown in this exhibit. The statement also shows that some advances have been made but a great many of them are very slight. The Milwaukee reductions do not run all of the way through on both rosin and turpentine from points on the shortline. I notice a cent advance in three instances on the first sheet and an advance of one cent in the rate on turpentine (Tes. 340-1).

Comparison is made of the earnings under the proposed rates on rosin with the earnings accruing to the carriers on coal, a commodity of very much less value but which moves in very much greater volume.

Exhibit 58 is simply to show that in lining up the South Atlantic ports and the Gulf ports on rosin and turpentine we have followed the usual basis. I see nothing improper about that. As to whether it would be also proper as extending into C. F. A. territory; I understand it has been done to certain points in C. F. A. territory, especially where [fol. 138] the through rates are made on Cincinnati combination, using specifics which were given the southern lines by the northern lines. I don't think that if there is justification for parity of rates at Cincinnati, based on the class rates, that the same justification would apply to all points beyond Cincinnati. I don't think it should apply north of the river, to Chicago and Kalamazoo.

As to how I justify the per ton mile earnings of 27 cents, Pensacola to Kalamazoo, versus 27.2 cents, Pensacola to Chicago: The Illinois Central has its own line from New Orleans to Chicago. It fixes the rate on rosin and turpentine, or did fix the rates thereon, from New Orleans to Chicago over its one line. The L. & N. Railroad gets into Chicago from Pensacola by a two-line haul. We are giving the shippers on our line the same rate as the Illinois Central gives the shippers on its line from its corresponding port. At Kalamazoo the Illinois Central has established a higher rate than it has established for its one-line haul to Chicago. We are meeting that competition at Kalamazoo. The fact that there may be some disparity in distance does

not justify or require on our part, going below the competition of the Illinois Central (Tes. 345-350).

I am not trying to justify the rate to Kalamazoo; I am justifying the rate by our relationship. I attempt to justify it by our relationship of our rates to the rates of the Illinois Central. If the Illinois Central can not justify it, we can not justify it.

Q. Now, coming to your Exhibit No. 81, you said there were reductions from nearly all points to Chicago, Milwaukee, and Indianapolis and so on. Now about Kalamazoo? How many reductions have you to Kalamazoo?

A. I think if you had followed my statement carefully, [fol. 139] you would have noted that I restricted that particular statement to Indianapolis, Chicago and Milwaukee.

The statement speaks for itself. There were not as many reductions to Kalamazoo as there were to those other three points. Coming up to the eastern end on the P. & A. Division, there are reductions from five stations. From the Alabama-Florida Division stations we made a 2-cent reduction. From the Yellow River Branch. That is all on the exhibit. I said there were some reductions.

The Illinois Central fixed the competition, regarding the Kalamazoo versus Chicago situation, which we met. With respect to Grand Rapids and Milwaukee, we did the same thing there as we did with respect to Chicago and Kalamazoo. We made our rates the same as the rates from the other Gulf port lines. The Milwaukee rate was made over the Chicago rate, and the Illinois fixed the rate to Chicago. That is my justification of the Milwaukee rate. I am only attempting to justify the proposed rate to Grand Rapids only by way of relationship to the rates from the other ports. If the Illinois Central failed to justify this so-called New Orleans-Chicago-Milwaukee compelled situation, we would of course keep our shippers in a position to compete with those on other lines (Tes. 351-352).

We do not undertake an advance of the proposed rate from Grand Rapids to Pensacola other than I have presented in my testimony.

S. C. Matthews, Assistant Freight Traffic Manager, Pennsylvania Railroad, Southwestern Region, New Orleans, testified substantially as follows: 40 years with the Penn-

sylvania. Appears as witness for C. F. A. lines generally. Had especial connection with the interterritorial rates during the Federal Control period in connection with Ex parte 57. The C. F. A. lines generally feel that the rates under suspension should be permitted to become effective and believe that those rates are reasonable rates with the possible exception of some few modifications. They do not [fol. 140] believe that from the southeast the rates are properly aligned in that tariff to Kalamazoo versus Chicago or Grand Rapids versus Milwaukee. From the Gulf ports, speaking of them as a whole, the C. F. A. lines feel that there are certain conditions that warrant possible special treatment. In other words, on account of the one-line haul, the Illinois Central Road from New Orleans to Chicago, that possibly there is a condition that would warrant, from New Orleans to Chicago, lower rates than would prevail from other Gulf ports or from the southeast including New Orleans, Gulfport, Mobile and Pensacola. In the suspended tariff from the southeast there are two sets of rates under suspension to Chicago. One is confined in the application to the Chicago and Eastern Illinois, Monon and Illinois Central roads. The other rates apply via the other lines and are somewhat higher than those applicable to the three roads mentioned. The C. F. A. lines feel that if the Illinois Central from New Orleans to Chicago establishes a rate and the other lines from New Orleans feel it proper that they should meet that rate that in so doing they should restrict the routing of it so that it would apply only to directly intermediate points to Chicago via reasonably direct routes from New Orleans to Chicago through the Ohio River.

The naval stores rates from the south for a great many years have been constructed on rates, on a basis adopted by the southern roads up to the Ohio River to which were added certain arbitrariers or specifics that have been served upon them by the northern roads, those specifics representing originally an average percentage north of Cincinnati and the then published through rates from New Orleans to the various destinations within C. F. A. territory, the percentage being an average of the percent north of the river to each given destination via all of the C. F. A. lines serving [fol. 141] that destination. Those specifics have been changed from time to time under the general increases per-

mitted by the I. C. C. and in 1918 the C. F. A. lines furnished to the southern lines through Chairman Caldwell a set of the revised specifics, bringing them up to date in line with the various Commission's decisions that had been issued at that time. The southern lines did not all of them amend their joint through rates in line with that notice. Some of them did. The last specifics were furnished to the southern lines, in line with their request, and after conference in Atlanta the last specifics having been furnished under date June 23, 1923, and in these last revised specifics furnished to the southern roads, the specifics from Cincinnati to Kalamazoo were made the same as to Chicago and the rate or specific from Cincinnati to Grand Rapids was made the same as to Milwaukee. These specifics were to be used regardless of the origin in the south. The specifics do not represent the divisions that the lines north of the river are now receiving out of the present joint through rates, nor do they reflect the full local rate north of the river.

I do not think that the South Atlantic port lines should apply from South Atlantic ports to Chicago the same rate as from New Orleans to Chicago because in my opinion there is an entirely different carrier situation and condition. There is a one-line haul. I believe that the combination basis that has been referred to by Mr. Doss is the proper basis for the making of rates from the South Atlantic ports to all points within C. F. A. territory. I am not familiar with the conditions from the South Atlantic ports to the Ohio River and we believe in our territory that the only basis to be applied from the South Atlantic ports would be the combination basis. If there is a competitive condition as to Chicago there may be some reason why some change might be made but we are not aware of those rea- [fol. 142] sons. We do not join in the rate of the Illinois Central from New Orleans to Chicago on rosin and accept something less than our specific proportion. Unless there has been some change made since I was General Freight Agent we do not join any southern road in the protection of the New Orleans-Chicago rate, and accept less than our specifics. There are certain other lines that might do that. Not to my knowledge through the Ohio River gateway does the Pennsylvania accept anything lower than the old original specific that has been increased (Tes. 379-381).

In the tariff under suspension the Pennsylvania Company is refusing to join in rates to Chicago on less than the combination basis. We did so because that was our position in the past. Other lines have adopted a different attitude than the Pennsylvania and the Baltimore & Ohio. The Monon Road and the Chicago & Eastern Illinois have seen fit to meet the competition of the Illinois Central by accepting something less. The divisions have not yet been agreed upon.

X-ex.:

I claim no particular knowledge of conditions at the South Atlantic ports. Anything I have said is not in justification of the joint through rates as published from these ports to points north of the Ohio River. We are attempting only to justify our specifics. We are offering no justification of the joint through rates from the Mississippi Valley. The service on a car of rosin from Cincinnati to Kalamazoo would be exactly the same whether it originated at New Orleans, Pensacola, Jacksonville or Savannah. The position of the C. F. A. lines is that their earnings north of the river should be exactly the same, regardless of point of origin. Our view is that if joint through rates are published in line with the notice which the C. F. A. roads have served on the southern lines there will be no destination Fourth Section violations within our territory (Tes. 384-386).

[fol. 143] I think there are some through rates published on naval stores from the Mississippi Valley to Chicago and C. F. A. territory today; to Chicago, Kalamazoo, Grand Rapids, Milwaukee and Detroit and various points throughout the territory in question. I cannot answer whether the Pennsylvania participates in those rates. I assume that we are shown as participating carriers. Personally, I do not believe that Pensacola, Mobile and Gulfport, being Gulf ports, are entitled to the same rate into Chicago that New Orleans enjoys; they do not have the one-line haul from those Gulf ports to Chicago. Eliminating the one-line haul I do not know the shortest distance to Chicago from the Gulf ports. I don't know the difference in distance from New Orleans to Cincinnati or Louisville as compared with Pensacola. I have not attempted to justify any lower rate from New Orleans to Chicago than from the other Gulf

ports. I do say that on account of the different condition from New Orleans to Chicago, there might be some reason why some line would want to establish a lower rate; or a rate that we would consider to be a subnormal rate; that ought not to apply from the other Gulf ports where there is no one-line haul through to Chicago.

Q. Leaving the one-line haul out of the question entirely, do you think that we are not justified in having the same rate to New Orleans?

A. I cannot leave the one-line haul out of it because it is there. It is a fact and you cannot leave it out. The fact that practically all of the naval stores production is east of the Illinois Central is not at all a justification for putting that great producing territory in the same rate situation to Chicago that the Illinois Central has.

Q. You consider that the only thing is that we must have a one-line haul into Chicago, to get a similar rate?

A. You should have transportation conditions, yes, sir, and in that case it is a one-line haul. Any locality is placed at a disadvantage when it has only a one-line haul. One of the criticims I offered of the proposed adjustment was [fol. 144] on the ground of the relationship which it will create as between Kalamazoo and Grand Rapids on the one hand and Chicago on the other. Grand Rapids and Milwaukee was another. The basis upon which the proposed rates to Kalamazoo and Grand Rapids are constructed as they now appear are satisfactory to the C. F. A. lines to those points, but not when considered with the rates published from the southeast to Chicago. I would not say that the rates as proposed to Kalamazoo and Grand Rapids are too high. I consider them reasonably low rates. I consider that the rates from the southeast to Chicago in the suspended tariff are too low.

As to whether if the southeastern lines for competitive reasons or otherwise, persisted in maintaining a certain level of rates to Chicago, it is my view that the rate to Kalamazoo should bear proper relation to that Chicago rate, or, should it still be constructed as in the proposed tariff: That is a matter which would have to be determined entirely by the southern roads. We believe there should be proper relationship between the Kalamazoo and the Chicago rates. We believe that in our notice to the southern lines we show what that relationship should be. Our

notice to the Southern roads, in effect, was worded that the rate to Kalamazoo should not exceed the rate to Chicago (Tes. 392-394).

It is our opinion also that the rates to Grand Rapids should not be higher but the Milwaukee rate, as it appears in the tariff, is too low. I believe that the Chicago rate as published from the southeast, in the suspended tariff, is unduly preferential to Chicago, vs. Kalamazoo and that the Milwaukee rate, as published, is unduly preferential to Milwaukee versus Grand Rapids.

Examiner Carter: I would like to find somebody who is going to attempt to justify the rates to Kalamazoo and Grand Rapids. Yesterday the witness passed it on to the Central Freight Association lines, and the Central Freight Association lines have stated their position. Now, if there is any particular justification further than what you have (R. 395) already put in, I think we ought to have it.

Mr. Gwathmey: Do you have reference to the rates from the Southeast?

Examiner Carter: Yes, sir. I suppose from the Southeast.

Mr. Gwathmey: Well, Mr. Doss in his testimony undertook, by numerous rate comparisons and otherwise, to show the reasonably low character of the proposed rates to Kalamazoo and Grand Rapids. It may be that he did not include the Grand Rapids in all of his exhibits, but he used Kalamazoo as typical of the level of the rates in that territory. He further explained that the rate to Chicago was depressed, and that the Southeastern lines have felt it necessary to make their rates to Chicago with some relation to the rates from the Mississippi Valley and Chicago.

Examiner Carter: Yes. Perhaps I did not make my question as clear as it should have been. I should have said "No justification has been offered of the alleged discrimination against those two points" (R. 396).

[fol. 145] I don't believe that I testified that the rates from the South Atlantic ports were too low as compared with the rates from New Orleans. I think my testimony was that I considered the rates via certain lines to Chicago to be too low in and of themselves. I don't know whether we agree or not with the rates from Mobile and Pensacola to

Chicago involving a two-line haul. I know I am firm in the belief that these are no one-line hauls from Pensacola or Mobile to Chicago. If the rate from Mobile and Pensacola is made the same as from New Orleans to Chicago, my opinion as to the relationship or reasonableness of the rates so made is that they are too low (Tes. 394-399).

Ex. 87

Mr. Doss recalled.

Dir. ex.:

The representative of the Southern Railway, which embraces New Orleans & Northeastern Railroad, was not able to be present and he has asked me to file on his behalf certain exhibits dealing particularly with the rates of that company. Exhibit 87 shows the present and suspended rates. To Chicago the rates on rosin from the N. O. & N. E. stations are reduced from 41 to 37 cents; from A. G. S. stations from 38½ to 37 cents. The present rates on turpentine from New Orleans & Northeastern stations to Chicago are continued. The present Alabama Great Southern 65½ cent rate at present in effect is reduced to 60 cents. I am not offering these exhibits in behalf of the Southern Railway as the only justification for the rates to Grand Rapids from these points. These exhibits simply show how the rates have been lined up from these points of origin shown in the exhibits. I went fully into the justification for the suspended rates in my testimony.

There is just one word I want to say about this Chicago-Kalamazoo situation. When we came to adjust the rates from the south Atlantic ports to the points north of the [fol. 146] Ohio River, our first thought was to make the rates on combination. That is substantially the present basis. Our rosin rate from South Atlantic ports to Cincinnati is 33 cents; that is, the suspended rates. The proportion of the C. F. A. lines from Cincinnati to Chicago is 14½ cents. We thought the rate ought to be 47½ cents. The water and rail rate today is 43½ cents. Had we continued making our all-rail rates with relation to the water and rail rates, our rate from Savannah and Jacksonville and other South Atlantic ports to Chicago would be 48 cents today. Now, when the rates were fixed from New Orleans to Chicago at

37 cents, we did not feel that we could carry 47½ cents from south Atlantic ports, and our shippers would not have stood for any such adjustment as that, and the railroads themselves felt that they ought to permit the South Atlantic ports to get into the Chicago market on a fair basis as compared with the Gulf ports, and we fixed 41 cents. That is 2½ cents less than the water and rail rate. We did not have that situation at Kalamazoo, and we made the rate there 47½ cents. That is the rate from New Orleans also. We handled Grand Rapids exactly in the same way. We made the rate to Grand Rapids on Ohio river combination, but not higher than from New Orleans (Tes. 440-442).

Thomas D. Guthrie, called by Jacksonville Traffic Bureau and City of Jacksonville, testified substantially as follows: Jacksonville has many naval stores concerns. The annual production of naval stores in Florida exceeds that of any other State. Jacksonville is the principal market and handles more than 70% of the State's production. Testifies concerning production of rosin and turpentine, quantities, and movement thereof to and from Jacksonville; destructive effect on the business of the proposed increased rates if allowed; markets and business competition.

L. Richards was called by the F. F. Dalley Co., Inc., Buffalo, manufacturers of shoe dressing, blacking, liquid and solid, large users of turpentine, and testified on the following subjects:

Protest against advances in turpentine rates as proposed [fol. 147] in I. C. C. A-424 dated September 1, 1923, shows additional cost to the company in event proposed rates become effective.

Frederick L. Arthurs, Factory Purchasing Agent, Larkin & Co., Inc., Buffalo, and numerous other companies, protested against rates in tariff I. C. C. A-424.

J. B. Morrow protests that the increased rates will produce unjust and unwarranted increases in revenue.

W. E. Willey is in charge of rate and tariff department of Proctor & Gamble Company, also represents numerous other soap manufacturers who have plants located at Cincinnati, Louisville, New Orleans, Chicago, Kansas City and New York. His testimony covered the following subjects, viz: The soap industry uses rosin only, and his testimony deals only with the rosin rates. Rosin is used in the soap manufacturing as a binder or filler in soap. The whole soap industry consumes 250,000 barrels of 500 pounds each per year. The soap manufacturers pay the freight on rosin which they use. I present our case upon the premise, based upon the strong belief, that not only the present northbound rates but also the carriers' proposed rates are unreasonable per se. Our plants are so located that there would be no hauls from the rosin producing territory less than 300 miles. We are advocating a measure of rates based on distances and such as will result in limited groups or origin points which happen to fall within fifty-mile blocks. We are not objecting to any basis of rates less than 300 miles. This particular proceeding does not involve any movement that might fall within 300 miles. In Exhibit 99 we took every rate on rosin from the interior territory to all of the South Atlantic and Gulf ports, worked the distances between all of the points on which the rates were published, and arranged those rates in mileage order; we averaged all of the rates [fol. 148] for distances from 1 to 25 miles; from 26 to 50 miles; from 51 to 75 miles; from 76 to 100 miles; and then in mileage blocks of 50 miles we averaged the rates from 101 to 150 miles. Altogether we used 7,194 rates. The rates from the interior to the ports are not in issue in this case or in any other case at the present time. The purpose of this exhibit is that in fixing a basis to apply over all of the rosin producing territory to C. F. A.—Ohio River it was our thought that the present rates from the interior to the ports which the carriers do not propose to change, and which are not involved in any proceedings, were a proper measure to use—in constructing rates to the destination territory here involved from the southeast to the Mississippi Valley. It is not my purpose to offer these compilations with the thought that they are to influence any change in the adjustments on rosin from these interior points to the ports. The present basis of rates from interior points being higher than from the Gulf ports en-

courages a movement to the ports and does not tend to develop a movement direct from the interior. It is my information that the purpose of the adjustment referred was to bring about that exact result. It is my thought that the present proceeding should be determined so as to remove that situation and establish for all concerned a just and reasonable line of rates.

Exhibit 100 is a comparison of the proposed average distance scale on rosin, car loads, with scales on other commodities including coal, cement and lime.

Exhibit 101 shows comparison of the present and proposed rates on rosin from representative shipping points to Ohio River crossings, Chicago, Detroit, Buffalo, and Hamilton, Ontario, with rates based on the proposed scale shown in Exhibit 99. There are 7 pages to this exhibit. I am advocating the application of my mileage measure to fix through rates from southern points to not only the Ohio River but also to territory north of the Ohio River.

[fol. 149] Exhibit 102 shows a comparison of the present and proposed rates on rosin with rates on lumber, carloads. In all of my study of the general southeastern rate adjustment, I have not found, nor do I know of any blanket rates on any commodities such as are proposed by the carriers to be applied on rosin—that is, so wide a blanket of rates. Referring to page 2, Exhibit 101, which shows the present rate on rosin from the Gulf ports to Chicago, 30 cents, and the rate under our distance proposal, to be approximately the same: It is our belief that that tends to show that the present rate to Chicago is a normal rate. We believe that the exhibit shows that the present rate is a reasonably high rate. I do not feel that these rates as proposed in Exhibit 99 should be specially treated for joint haul. We do not believe that there should be a two-line scale on commodities such as rosin and raw material; and furthermore, that would be the application of a strict mileage scale which we do not advocate. We are advocating a limited number of groups. That thought is influenced by the fact that our proposal goes to rates on the longer haul. As I testified, we are only proposing rates for distances in excess of 300 miles and on hauls of that length there should not be a one- and two-line basis. The interests I represent advocate a reduction in the present rate to Chicago from the South Atlantic ports, Jacksonville, Savannah, Brunswick and

Charleston, of from 39½ to 31 cents. We further advocate the maintenance of that rate as a maximum rate as compared with intermediate points. My proposition is a reduction in the rate from Jacksonville to Chicago of from 39½ to 31 cents and the establishment of that rate as a maximum at all intermediate points. According to the exhibits which respondents filed, it seems to be the case that the rate from Jacksonville to C. F. A. points via all-rail is at the present time actually lower than the rates carried by the water-and-rail routes through Baltimore. I cannot see that that proves in any way that the present rate is unreasonably low.

[fol. 150] E. S. Gaines, Savannah, Ga., familiar with the present and suspended rate adjustment on naval stores from southeastern territory to points under consideration. Is not a naval stores producer or dealer or factor. Represents the naval stores interests in this proceeding located at Savannah, Brunswick and other South Atlantic ports as well as the producers of the interior in the South Atlantic section. The names of the concerns that I represent have been filed and they number approximately 300. I have never made any direct appeal or request or solicited the representation of any name that is a party to this record.

Exhibit 108 is a statement of carload shipments of rosin from Pensacola, Brunswick, Jacksonville, and Savannah, to points in C. F. A. territory showing the date of shipment, car initials and numbers, origin, destination, contents, and weight. The purpose is to show the average loading.

Exhibit 109 is similar and is offered for the same purpose.

Exhibits 111 shows the basis of proposed rates on rosin and turpentine, carloads, from south Atlantic ports, Gulf ports and southeastern and Mississippi Valley territory, trunkline and shortline stations, to Ohio and Mississippi River crossings and C. F. A. territory. We believe that basis is reasonable in every respect, and we likewise offer it as maximum rates for application from and to the territory I have just described. From the Gulf ports to Chicago, Milwaukee and intermediate points to Indianapolis and intermediate points and C. F. A. territory on rosin the

present rates; on turpentine 3 cents over the present rates. From South Atlantic ports and southeastern points to Chicago, Milwaukee and intermediate points, 4 cents on rosin and 7 cents on turpentine over Gulf ports. From South Atlantic ports and southeastern points to C. F. A. territory and east of Chicago and Indianapolis and interme- [fol. 151] diate points, lowest combination and not higher than from the Gulf ports. When I refer to the lowest combination I certainly make no reference to the combination of locals but to the combination of proportionals, specifics or whatnot as might be fixed by the C. F. A. lines and added to a reasonable rate from the South Atlantic ports to the Ohio River crossings, if that be the desired method of constructing rates to that territory (Tes. 592-596). It is our desire to have through rates published in one tariff. From South Atlantic ports and southeastern points to C. F. A. territory west of Chicago, Milwaukee, and Indianapolis and intermediate points, lowest combination, observing 4 cents on rosin and 7 cents on turpentine over Gulf ports as a maximum. The rates from the short line stations should be no higher than are the rates from the trunk line stations. The short lines should be compensated for the service they perform by the trunk lines who enjoy the handling of the traffic and who receive reasonable and adequate revenue for the service they perform.

Exhibit 129, 2 page statement of comparative rates from South Atlantic ports to points in C. F. A. territory on various commodities versus rates on rosin and turpentine, carload, showing rates, average loading, mileage, per car revenue, and per car mile earnings.

Exhibit 131 is a comparative statement of rates on various commodities versus rosin and turpentine from Gulf ports to C. F. A. territory, showing mileage, present rates on other commodities, proposed rates on rosin and turpentine, average loading, per car revenue and per car mile earnings. The most important interests I represent are the port interests.

X-ex.:

Exhibit 126, showing the rates from the South Atlantic [fol. 152] ports to C. F. A. destinations I propose a rate of 33 cents on rosin from South Atlantic ports to Cleveland from Savannah. We propose from the South At-

lantic ports to C. F. A. territory to east of Chicago and Indianapolis intermediate points, lowest combination but not higher than from the Gulf ports. I believe that the rate that I have shown is the present rate from the Gulf ports. I do not agree that I would reduce the rates from the South Atlantic ports to every C. F. A. destination. There may be some reductions to some points and that is because they should properly be because the rates are now and then too high.

Q. On that basis you would reduce your rate on rosin from Jacksonville to Kalamazoo from 39 cents to 34.5, wouldn't you? The present rate from Jacksonville to Chicago to 38.5 to 34 cents, and the present rate from Jacksonville to Milwaukee from 44.5 to 37 cents; the present rate from Jacksonville to Detroit from 39.5 to 33 cents. Those are the reductions which you advocate to apply from the port proper as I understand it.

A. No, sir, from the ports and from points intermediate, I don't agree that it would necessarily follow from my proposal that the carriers' revenue would be reduced on this traffic not only from the ports proper but also from all interior points—not until you produce a rerating statement showing that the revenues would be reduced.

George J. Bolender, Traffic Manager for Chemical Manufacturing Company, located at points both north and south, including Kalamazoo, Milwaukee and Burlington, Ontario, the corporations being Western Paper Makers Chemical Co., Kalamazoo, and Vera Chemical Company of Milwaukee and Burlington, who are affected by this rate adjustment, testified substantially as follows, viz: Has had twenty years' experience in traffic matters with Central Freight Association lines and large industries, including Sears-Roebuck & Co., American Radiator Co., Kalamazoo Chamber of Com- [fol. 153] merce, and a member of Detroit District Freight Traffic Committee during Federal Control. Western Paper Makers Chemical Company has its principal office at Kalamazoo and manufacturing plants at Kalamazoo, Pensacola, Jacksonville and Savannah. The products of our Savannah and Jacksonville plants are largely exported. The products of our Pensacola plant are principally shipped to Kala-

mazoo. The matter of the adjustment of rates on rosin at Kalamazoo has been under consideration for over four years, having first been taken up with the Railroad Administration in 1919. Due to the fact that we were unable to secure the adjustment of rates that we felt we were entitled to, we filed complaint, Docket No. 13157, which is now pending. In Central Freight Association territory we are in competition with the manufacturers of rosin size at Chicago, and at various points in the east. We are in very strong competition with the paper manufacturer himself, as many paper mills are at the present time making their rosin size and all mills are able to do so, it requiring only a very small investment in equipment to permit the mills to take care of their rosin size requirements. There is no proposal to increase rates to eastern territory. Our competitors in that territory are in the position of having their rates remain stationary while ours are to be increased in varying amounts averaging around 20%. Our competitors at Chicago will have a great deal more advantage in C. F. A. territory than they have today, due to the fact that the rates to Chicago are not proposed to be increased to the same extent as to Kalamazoo. Kalamazoo is located in the southwestern part of Michigan, about 35 miles from the Indiana line, and is on the main line of the Michigan Central from Chicago to Detroit, and on branch lines of the Pennsylvania from Richmond, Indiana, to Mackinaw City; the New York Central running from Elkhart to Grand Rapids, and on the main line of the Grand Trunk from Chicago to Port Huron. Kalamazoo is also served by two short lines (Transcript [fol. 154] 627-630). The rates on rosin from southern producing points to Kalamazoo have always been higher than the rates to Chicago and Detroit. In some cases they have been higher than the rates to Grand Rapids, 50 miles farther north and almost uniformly they are and have been higher than the rates to Milwaukee. Due to the fact that Kalamazoo is on the main line of the Michigan Central, any rate from the south to Kalamazoo which is higher than the rate to Chicago or Detroit is in violation of the Fourth Section. This is due to the fact that there are routes available via junctions both east and west of Kalamazoo connecting the Michigan Central with the Ohio River, a few of these via which freight is actively solicited may be mentioned:

Baltimore & Ohio to Toledo; Cincinnati Northern to Jackson; G. R. & I. to Kalamazoo; C. I. & N. and L. E. & W. to Michigan City; and the C. I. & L. to Michigan City; Big Four to Chicago, Niles or Toledo. If freight be moved through Cincinnati in connection with either the B. & O., C. N., or G. R. & I. & M. C. from the junction points of the above lines to Chicago, Kalamazoo is directly intermediate via any of those routes or, if freight originates at or beyond the Ohio River crossings and moves to Chicago, Michigan City or Niles, in connection with the routes reaching those points, final destination Detroit via the Michigan Central, Kalamazoo is again intermediate and the rates to Kalamazoo, when higher than to Detroit, are in direct violation of the Fourth Section. The same situation is true with respect to the Grand Trunk routing to Chicago and Detroit, and in addition the Grand Trunk operates a car ferry to Milwaukee, so that business reaching the Grand Trunk at any points west of Kalamazoo for Milwaukee via car ferry routes, must pass the main line of the Grand Trunk which is considered to pass through Kalamazoo. The rates to Milwaukee being lower than the rates to Kalamazoo, the Kalamazoo rate is illegal under the Fourth Section. The Michigan Central is in active competition with the direct line from Cincinnati to Chicago and from Louisville and Evansville to Detroit, and have no intention of getting out [fol. 155] of either the Chicago or Detroit business, being the most important line that serves both of those cities (Tes. 631-633).

Mr. Matthews testified that so far as he was aware there were no Fourth Section violations in Central Freight Association territory and suggested a certain division of the territory or a certain routing of business for Chicago, saying that it should move in connection with the Big Four to Indianapolis through Greensburg, Indiana, thence via the Pennsylvania to Chicago. On pages 43 and 44 of the tariff you will find that there are higher rates to Kokomo and at Logansport to Chicago on their line concerning which he was talking. Kokomo is a paper producing point. This is only one illustration of the violations of the Fourth Section in Central Freight Association territory. Another one is at Hamilton, Ohio, another paper-producing point, where the rate is higher than at Indianapolis, further beyond on the C. I. & M.

On the Michigan Central Railroad paper mills are located as follows: The Consolidated Paper Company is located at Monroe, Mich., and the Monroe Paper Products Company at Monroe, Mich., the Detroit Sulphite Paper Company at Detroit, Peninsular Paper Company, Ypsilanti, Mich., Kalamazoo Parchment Company, Kalamazoo, Mich., Sutherland Paper Company, Kalamazoo, and the French Paper Company, Niles, Mich., for all of whom I have filed appearances, and to all of which points rates are in effect from all points in violation of the long and short haul clause.

My object in making this statement is that if the paper mills fail to buy their rosin size from us but purchase their rosin direct, these particular mills would be in the position of having to pay 10.5 cents more from the Gulf ports than Chicago, a point further distant.

[fol. 156] There has been much said here, particularly by the carriers, about the many reductions in rates carried in the proposed tariff, particular mention having been made of Chicago and Milwaukee on numerous occasions. There were very few citations of reductions at Kalamazoo.

Obviously no mere comparison of rates will reflect the effect of a readjustment of rates unless that comparison is accompanied by a showing that business moves on the rate and in what volume.

Exhibits prepared from actual shipments received by Western Paper Makers Chemical Company at Kalamazoo during March, April and May, 1923, show 126 cars of rosin, which is something less than our normal receipts for the period. The total weight is approximately 7,000,000 pounds, whereas about 7½ million pounds would be our normal receipts for the three months period.

Exhibit 132 consists of 10 pages and shows the points of origin in alphabetical order, together with the dates of shipments, car numbers, weights, and the total charges assessed and collected in connection with the traffic; also from each point of origin we have indicated the distance to Kalamazoo, together with the route via which the distance is figured, and also the distance to Chicago with the route via which the distance is figured. I indicated the distance to Kalamazoo together with the routing, also distance to Chicago with the routing. Of the 126 cars, 15 moved from Brunswick, 23 from Pensacola, and 25 from Jacksonville, or exactly 50% from the ports, and 50% from the interior. Aver-

age loading from Jacksonville, 58,722 pounds, and from Pensacola 56,723 pounds. The average for the 126 cars is [fol. 157] 54,406 pounds.

Exhibit 133 brings forward the figures contained in the preceding exhibit showing the origin of the 126 cars. It also shows the distance to Kalamazoo, total weight, rate charged and collected, total charges paid, charges per car, earnings per ton mile and per car mile, both under the present and proposed tariff. It shows weighted average rate on the 126 cars to Kalamazoo was 40.3 cents per cwt., while the rate under tariff I. C. C. A-424 is 47.6 cents per cwt. The rate from Kellyton, Ala., of 48.1 cents is due to the fact that some of the business moved at a rate of 48.5 cents and some at 47.5 cents, due to the fact that the rates are not the same today via all Ohio River crossings. On the exhibit 13 points of origin are represented and the new tariff increases the rates from 8. With one exception there is no reduction proposed from any of these points to Kalamazoo. The increase proposed from Pensacola is 38% and that from Jacksonville is 22%. From Pace Junction the increase is 13%. If this tariff is permitted to go into effect the freight charges on the rosin consumed by the company at Kalamazoo will be increased $22,000 a year. It is very important to observe in connection with this exhibit and the figures thereon that the averages are weighted averages, for the reason that the average of the rates themselves would indicate only an increase of 3 cents per cwt., or about 6-2/3%, whereas the weighted averages show, according to the exhibit, an increase of 7.3¢ per cwt. or 18.2%.

Exhibit 134 is similar to No. 133 except 134 indicates the present and proposed rates on the same business, assuming the destination to have been Chicago instead of Kalamazoo. No. 133 shows there were no reductions in rates from any of the points of origin to Kalamazoo. No. 134 indicates that to Chicago from the 13 points of origin there are 10 reductions in rates and 3 advances, from which it might be argued that there was a substantial reduction in rates at Chicago. In spite of the fact that 10 of these 13 rates in- [fol. 158] dicate reductions, the total charges on the 126 cars are greater under the proposed rates than under the present rates, the difference being $591.70, or $4.70 a car. This represents an increase per car mile of 2 mills, or per car mile of one-half cent. I would like to direct particular

attention to the very high earnings from Jacksonville and Pensacola, and Bowden, Ga. (Tes. 635-640).

We have competition at Chicago. The earnings under the proposed rates from Pace Junction to Kalamazoo exceed the charges on the same cars to Chicago of more than $2,000, or $53 per car.

Exhibit 135 is prepared from figures taken from Nos. 133 and 134, being the comparison of the earnings on the rosin received by our company at Kalamazoo during the three months' period, with the earnings of the same traffic if destined to Chicago, and reduced to indicate the percentage relationship. No. 135 indicates that for a difference in distance of less than 3% the freight charges to Kalamazoo are approximately 20% higher than to Chicago. The exhibit shows the exact figures.

Exhibit 136 is similar to the preceding exhibits, using the same points of origin and same volume of business but assuming the destination to have been Milwaukee. The distances are the same as the distances to Chicago plus 85 miles, the short line distance from Chicago to Milwaukee. In explaining Exhibit 133 I stated there were no reductions proposed at Kalamazoo and 10 reductions were proposed at Chicago. At Milwaukee there are 9 reductions, 3 advances, and one rate remains the same. In spite of the 9 reductions the exhibit shows the total charges on the 126 cars, if destined to Milwaukee an increase in freight under the proposed tariff of $356. Attention is directed to the very favorable earnings on the basis of the present rates [fol. 159] to Milwaukee. The distance to Milwaukee is substantially greater than to Kalamazoo but the charges are approximately 6% higher at Kalamazoo than at Milwaukee.

Exhibit 137 (taken from Exhibit 42 in Docket 13157) shows the rates from Carbur, Florida, to Cairo, St. Louis, Chicago and St. Paul, the distances and the ton mile earnings, and the rates named in I. C. C. A-424 from Carbur, Florida, to the same points. The rates proposed in I. C. C. A-424 would result in average ton mile earnings of 7.85 mills to those points, while the proposed rates from all the producing points indicated in the previous exhibits to Kalamazoo would result in a proposed ton mile earning of 9.8 mills. My theory about the Illinois Central one-line rate between New Orleans and Chicago is that it is a normal rate. The 30 cent rate today is a reasonable rate and a normal rate

from the Gulf ports to Chicago whether in connection with the Illinois Central or two lines or three lines. The rates apply over two and three lines and that is the theory on which are prepared the next two exhibits.

Exhibit No. 138, which I now offer, is similar in form to the exhibits showing the charges on rosin purchased by our company. In this case I have assumed that the business moved to Chicago on the basis of the present rate from the Gulf ports, namely, 30 cents.

This exhibit shows that had the business moved on that rate the earnings would have been $163.22 per car, which, I believe, is a reasonable rate not only to Chicago but to points in the group of which Chicago is or should be a part, including Kalamazoo. Earnings of $163.22 are not low. In support of that statement I want to give the rates on a number of commodities which might be termed low grade or raw materials, rates applying from New Orleans and being named in Emerson's I. C. C. No. 78, that is, showing that $163.22 per car compares favorably with the earnings on the other articles named. The distance from New Orleans to Chicago is 930 miles, and the average distance from all the producing points shown on the exhibit is 940 [fol. 160] and a fraction miles, which compares. $163.22 will transport 51,816 pounds of asphalt, on which the rate is 31 cents and the minimum 40,000 pounds, or 39,810 pounds of denatured alcohol, on which the minimum weight is 30,000 pounds and the rate 41 cents, or 42,953 pounds of burlap bagging, on which the rate is 38 cents and the minimum weight 30,000 pounds, or 49,764 pounds of cottonseed cake, on which the rate is 33 cents and the minimum 30,000 pounds, or 55,237 pounds of fertilizer on which the rate is 29 cents and the minimum 30,000 pounds, or 53,515 pounds of scrap iron on which the rate is 30.5 cents and the minimum 40,000 pounds.

I can't testify what the average loading of scrap iron is. I am telling you how much of those commodities $163.22 will handle. I stated that the average loading of rosin was 54,400 pounds. That will handle 39,810 pounds of corn oil, on which the rate is 41 cents and the minimum weight 30,000 pounds. The average of the above figures is 43 per cent in excess of the tariff minimum.

Exhibit 139 is exactly the same as No. 138 except I have assumed the business moved to Kalamazoo on the basis

of a 30 cent rate. The average distance to Kalamazoo is 967.8 miles, which is not sufficiently greater than the distance to Chicago to warrant any difference in the rates. Comparing the mileages of Chicago and Kalamazoo, the average mileages, that variation or difference is not as great as is the mileage at points of origin or the spread is not as great as at the points of origin which they intend to make one group in this tariff.

Mr. Cook testified on his line that the spread in distance between the points of origin was 200 miles.

In 1922 when hearings were conducted in Docket No. 13,157, it was testified on behalf of the complainant that no rosin size was produced commercially in Chicago, but that the complainants' competition was located at other points. [fol. 161] The conditions today are the same as in 1922 in so far as the competition in the east or between paper mills themselves is concerned, but since that time there has been established at Chicago a plant engaged in the manufacture of rosin size for sale to paper mills, and certainly from a freight rate standpoint that situation was made to order for that industry.

Exhibit 140 shows the advantage enjoyed by the manufacturer at Chicago over Kalamazoo in that part of Central Freight Association territory east of the Indiana-Illinois State line under the proposed rates. I have not included the points in Illinois because I recognize that every manufacturer is entitled to the benefit of his location, and obviously Chicago should have better rates than Kalamazoo to points in Illinois, and if we are to meet Chicago's competition in Illinois it must be on some basis other than equality of freight rates. The same rule, however, would seem to entitle Kalamazoo to the advantage of its geographical location, and consequently more favorable freight rates at points east of the Indiana-Illinois State line.

(October 5, 1923.) On Exhibits 133, 134, 135, I just want to direct attention to the fact that the rates to Kalamazoo today are higher than the proposed rates to Chicago.

X-ex.:

The Kalamazoo company distributes rosin size in C. F. A. territory generally except Wisconsin and parts of Illinois. We try to ship throughout this territory in the States of Indiana and Michigan. The principal competi-

tion is the manufacture of the size in the paper mill itself. In other words, a great many of the paper mills manufacture and use their own rosin size in the manufacture of paper. In addition to that competition we have competition throughout the east, New York, Erie, Pa., and Chicago. There are manufacturers of rosin size at those places who sell in competition with us. At Kalamazoo some of the [fol. 162] strongest competition comes from Albany, N. Y. It is not a fact that one of the strongest competitors is located at North Milwaukee. That company is Vera Chemical Company, which I represent here, and which is our own company. I am representing that company and our own company but it is a separate corporation from the Western Paper Makers Chemical Company, with which it does not in the least compete. No rosin moves in C. F. A. territory. Rosin size does move in that territory.

Q. Aren't those Fourth Section violations that you speak of brought about in your mind by reason of the fact that you are comparing the rates to Kalamazoo with the lower rates to Chicago when the rates to Chicago do not apply via any route passing through Kalamazoo?

A. That is right.

By Mr. Tuttle:

Q. As to the proposed rates only, however, not as to the present rates.

A. Yes, that is true. I do not wish to give the Commission to understand that there will be Fourth Section violations such as I mention under this proposed adjustment, if it becomes effective, not from the South Atlantic ports (Tes. 668-670).

R. L. Tuttle, Traffic Manager for the O. & W. Thum Company, Grand Rapids, and Berry Bros., Detroit, who have similar interests. O. & W. Thum Company manufacture insecticide chemicals and sticky fly paper—Tanglefoot. Their normal production is approximately 375 cars per year, or has been in the past. The production has decreased and for 1923 was only 225 cars (Tes. 671-673). The Tanglefot Company is in competition with other chemical manufacturing companies located at Detroit and Chicago. The competition is with practically every corner

drugstore in the United States which can manufacture these very low grade poison fly papers at a very low cost which we are compelled in our manufacture to meet. The raw materials, the principal ingredients, are the castor beans, which are imported almost entirely from India, and rosin, which is obtained in southeastern territory and Mississippi Valley territory, Pensacola, Savannah, Jacksonville and Mobile. Railroad experience embraces 18 years, [fol. 163] Nashville, Norfolk and Cincinnati in employ of Southern Railway and Seaboard Air Line Railway in auditing, local freight offices, and traffic department; with Grand Rapids & Indiana, Lake Erie & Western and Big Four in C. F. A. territory, in tariff bureau and division freight offices. For past eight years entire work has been devoted to industrial traffic work. Formally adopts testimony given by Witness Bolender in respect to the rate situation existing at Kalamazoo, as relatively existing at Grand Rapids, and will amplify his statements in the extent that they are different at Grand Rapids than at Kalamazoo. We were intervening petitioner in I. C. C. 13157 filed by the Western Paper Makers Chemical Company. Our petition in that case was that the rates to Grand Rapids from southeastern territory be made no higher than the existing rates to Milwaukee, that the rates from the Mississippi Valley territory to Grand Rapids be made no higher than the rates to Detroit. Grand Rapids is located on the lines of the New York Central and Michigan Central Railroad and on the main line of the Pere Marquette between Chicago and Buffalo, passing through Grand Rapids and Detroit. We are on the D., G. H. & M. Division of the Grand Trunk, which operates from Detroit through Grand Rapids to Milwaukee via Grand Haven car ferry route. On line of the Pennsylvania extending from Cincinnati to Richmond, north to Mackinaw. Grand Rapids is 49 miles by the Pennsylvania north of Kalamazoo, and 117 miles east of Milwaukee via the car ferry line and rails of the Grand Trunk.

As to the Fourth Section situation complained of at Grand Rapids, the Pennsylvania Railroad, Michigan Division, operating from Cincinnati to Milwaukee, Wis., operates through Grand Rapids, Mich., on their Michigan Division; thence the Grand Trunk Ry. to Milwaukee, Wis. There are also operating workable routes from Cincinnati to

Grand Rapids, via the lines of the Big Four and the Baltimore & Ohio, from Cincinnati to Toledo with the D. & T. [fol. 164] S. L., and Grand Trunk Railways, via Durand, through Grand Rapids, to Milwaukee, Wis., via Grand Haven and the car ferry routes, making Grand Rapids, via these routes, intermediate to Milwaukee. At that point, in respect to the question of circuity, particularly with the Pennsylvania Railroad, I want to direct attention to the fact that the short line distance from Cincinnati, Ohio, to Milwaukee, Wis., via the C. & O. Railway of Indiana, and Chicago, Ill., and the Chicago & Northwestern Railway is 370 miles. The distance by the Pennsylvania, with the C. & O. to Richmond, Pennsylvania Railroad to Grand Rapids and Grand Trunk Ry. to Milwaukee via Grand Rapids and Grand Haven, is 414 miles, or a difference of 44 miles in excess of the short line mileage, which we submit is not unreasonably circuitous.

As to the Fourth Section violation at Grand Rapids, Mich., compared with Detroit that obtains as to the Mississippi Valley territory, on traffic moving in connection with the Monon Railroad via Louisville, through Michigan City in connection with the Pere Marquette Railroad, via Grand Rapids to Detroit and in connection with the routes of the Mississippi Valley lines to Cairo, that is the Illinois Central and Big Four, from Chicago junctions and the Pere Marquette Railroad to Detroit, through Grand Rapids, Mich., in connection with the Pere Marquette Railroad (Tes. 673-677).

Exhibit 142 shows present rates applying on rosin in carloads and proposed rates upon that commodity from Gulf ports to Grand Rapids, Chicago, Cleveland, Cincinnati, Detroit and Milwaukee. There is a smaller measure of increase to Chicago, a point only 12 miles less distant from Cincinnati than Grand Rapids, and a small relative percentage increase at Milwaukee of 21.2%, that point, via the short line mileage, being 44 miles greater from Cincinnati than is Grand Rapids.

[fol. 165] Exhibit 143 shows from Pensacola under the proposed adjustment based upon our ton mile earnings applied against the distance to Grand Rapids, our rate, compared with the rate per ton mile to Milwaukee, would be 33½ cents and on the proposed Milwaukee rate and before the aforementioned process our rate would be 40½ cents in-

stead of 48 cents. The above formula applied against the Chicago rate would produce under the present adjustment a rate of 33½ cents to Grand Rapids and under the proposed rate, to Chicago, a rate of 41½ cents to Grand Rapids instead of 48 cents, indicating by comparison with Chicago and Milwaukee that our rates both as to the present and the proposed rates are seriously out of line. The formula above referred to applied to the present Cleveland rate would produce a rate at Grand Rapids of 33½ cents, and applied against the Detroit rate would be 33 cents. As to the proposed Detroit and Cleveland rates they have received what in our opinion is a similar unwarranted increase when compared with the adjustments proposed at Chicago and Milwaukee.

Exhibit 144 shows that based upon the present Milwaukee rate, 43½ cents, the ton mile earnings for such rate, for the distance to Grand Rapids, our rate would be 40½ cents instead of 44½ cents as proposed. Based upon the proposed rate to Milwaukee and the ton mile earnings attached, our rate for 1,050 miles would be 41 cents, or in each case from the South Atlantic ports lower than the Milwaukee rate to Grand Rapids. By the same process, applied against the Chicago ton mile earnings, our rate would be 39½ cents, and under the carriers' proposal our rate would be 41 cents instead of 48 cents.

Statement by Mr. Doss: The rates from the Gulf ports to Chicago and intermediate territory are made by the Illinois Central Railroad and those rates are applied via all routes [fol. 166] from the Gulf ports and the Mississippi Valley territory, so they have only that one set of rates to Chicago. Now when we come to fix our rates from the southeast certain of the lines would join us in the differential basis over New Orleans. Certain other lines would not join us but insisted that the rates be made on combination as to Chicago. There are two sets of rates applying only from the Carolinas and the southeast to Chicago. The territory that lies east of the Louisville & Nashville is the territory from which the two sets of rates apply. That is the boundary line where two sets of rates apply and one set of rates applies. To C. F. A. territory east of Chicago the rates from both the Gulf ports and the southeast are made by the use of the combination of those rates to the river plus the specifics of the C. F. A. lines beyond (Tes. 684-685).

Mr. Tuttle: Exhibit No. 146 shows the relation which the rates to other points bear to the rate to Grand Rapids, viz: The first class proposal to Chicago is 92.4%, rosin 77.1%; Detroit class rate 100%, rosin rate 99%. From the Gulf ports the class rate proposed to Milwaukee is 96.2 while the rosin rate proposed to Milwaukee is 83⅓% of the proposed rate to Grand Rapids. The same relative comparison is carried out as to Savannah.

Exhibit 147 is a statement of average mileages applying from various Ohio River crossings to Grand Rapids, Chicago, Cleveland, Detroit and Milwaukee. The average shows that the distance to Grand Rapids is 16 miles less than to Detroit, 19 miles less than to Cleveland, 24 miles greater than to Milwaukee from all the crossings.

E. B. Gaines, recalled, representing Mr. Addicks, of the Mobile Chamber of Commerce, offers Exhibits 148, 149 and 150.

M. P. Smith, Assistant Traffic Manager of Edward Hines, Yellow Pine Trustees, testified: We expect to ship about [fol. 167] 300 cars of turpentine and about 1,200 cars of rosin per year. I am not undertaking in any way to deal with the northbound rates. The only thing is we are in favor of the northbound rates to the extent that they are removing the present discrimination as against the interior shippers in favor of the interests at the ports. We are in favor of the leveling process (Tes. 720).

E. J. Doss: The present rate on petroleum products from New Orleans to Chicago via the Illinois Central is 36 cents and via the other lines it is 38½ cents. The other lines did not feel that they could go as low as the rate of the Illinois Central. That same thing is true of the rate to Indianapolis. The rate is via the Illinois Central 36 cents and via the Louisville & Nashville and other lines 38½ cents. The rate on petroleum road oil from New Orleans to Chicago via Illinois Central is 30½ cents and via the other lines 32 cents.

In other words 30½ cents was thought to be so low on petroleum road oil that no line except the Illinois Central would participate in it.

C. A. Hunt, Chief of Tariff Bureau, Michigan Central Railroad, Detroit, testified:

Present during entire hearing and heard testimony of witnesses. The Michigan Central does not propose to join in the Gulf ports to Chicago rate, thereby reducing the intermediate rates between Chicago and Toledo. That will eliminate the question of the Fourth Section violations via the Michigan Central at Kalamazoo through Detroit.

[fol. 168] The 155 Exhibits

Statement re Exhibits

Mr. R. J. Doss in the course of his testimony introduced and testified concerning the following exhibits:

Ex. 1 (Doss).—A large map showing railroad junction points in the Southeastern part of the United States.

Ex. 2 (Doss).—5-page memorandum of conference between representatives of carriers and shippers held in Atlanta, January 24, 1923, to consider proposed revision of rates on naval stores from southern territory to Ohio and Mississippi River crossings, Gulf ports, points in Illinois Freight Association, Central Freight Association, Buffalo-Pittsburgh and Western Trunk Line Committee territories.

[fol. 169] Ex. 3 (Doss).—2-page excerpt from United States Department of Agriculture Bulletin No. 229, dated "Washington, D. C., July 28, 1915, and entitled The Naval Stores Industry".

Ex. 4 (Doss).—1-page statement prepared from the records of the Department of Commerce showing production of Naval stores in the United States for the seasons 1920-1921 and 1921-1922. It shows a total of 1,577,344 and 1,654,242 barrels of rosin for 1920-1921 and 1921-1922, respectively, and 24,429,200 and 24,308,755 gallons of turpentine for the same years, respectively.

Ex. 5 (Doss).—1-page statement showing inbound receipts of naval stores at Savannah, Ga., and Jacksonville, Fla., for seasons 1917-1918 to 1922-1923, inclusive. The outbound movement from Savannah during this period is also shown. For the last year named, 1922-1923, there was received at Savannah 388,272 barrels of rosin and 102,861 barrels of turpentine, and at Jacksonville 470,732 barrels of rosin and 121,000 barrels of turpentine.

Ex. 6 (Doss).—1-page statement of rates on rosin and turpentine, carloads, from Jacksonville, Fla., to Cincinnati, Chicago and Kalamazoo, which is a chronological statement of rates from 1897 to date.

Ex. 7 (Doss).—7-page chronological statement of water and rail rates on rosin and rosin size, carloads, from Savannah, Ga., and Jacksonville to Chicago, Milwaukee, Kalamazoo and Grand Rapids. Also a chronological statement of all water proportional rates on rosin and rosin size, carloads, from Savannah and Jacksonville to Baltimore, when destined to Central Freight Association Territory. Also a chronological statement of local all rail rates on rosin and rosin size, carloads, from Baltimore, Md., to Chicago and Milwaukee, Kalamazoo and Grand Rapids. Also statement showing published through all rail rates, or combination rates, on certain dates shown, as compared with the water and rail rates applicable via the Merchants & Miners Transportation Company and Baltimore, Md., from Jacksonville, Brunswick and Savannah to Chicago, Milwaukee, Kalamazoo and Grand Rapids. Also a chronological statement of local and proportional commodity rates and unpublished specifics, on rosin, carloads, from Cincinnati to Chicago, Milwaukee, Kalamazoo and Grand Rapids. These statements cover the period July 1, 1912, to July 1, 1922.

Ex. 8 (Doss).—1-page chronological statement of rates on rosin and turpentine, carloads, from Jacksonville, Fla., to Buffalo, N. Y. It covers rates in effect from May 3, 1912, to September 1, 1923.

Ex. 9 (Doss).—1-page chronological statement of rates on rosin and turpentine, carloads from Willacoochee, Ga., a representative Georgia station on the Atlantic Coast Line Railroad, to Cincinnati, Chicago, Kalamazoo and

Buffalo. It covers rates in effect from June 8, 1905, to September 1, 1923.

[fol. 170] Ex. 10 (Doss).—1-page chronological statement of rates on rosin and turpentine, carloads, from Fayetteville, N. C., representative of Carolina Territory, to Cincinnati, Chicago Kalamazoo and Buffalo. It covers rates in effect from January 6, 1898, to September 1, 1923.

Ex. 11 (Doss).—2-page statement showing date, origin, destination and weight of cars of naval stores originating at points on the Atlantic Coast Line Railroad, passing Albany, Ga., from March 24, 1923, to September 21, 1923, inclusive. The average weight per car of the rosin and turpentine is separately shown.

Ex. 12 (Doss).—3-page statement showing movement via Atlantic Coast Line Railroad of naval stores, carloads, from Savannah, Brunswick and Jacksonville, to Ohio and Mississippi River crossings, Virginia cities and points beyond, including Dayton, Ohio, Chicago, Cincinnati, Buffalo, Milwaukee, Flint, Rochester, Indianapolis, St. Louis, Cleveland, Baltimore, and Chelsea, Mass., for the 12 months' period ended July 31, 1923. This includes movement from Savannah River wharf, export terminals (Jacksonville) and Milldale.

Ex. 13 (Doss).—2-page statement of comparison of commodity description, crude wood oil, pine gum, pine pitch, pine tar, pine tar oil, rosin dross and rosin oils, shown in the suspended tariff, I. C. C. A-424, with the descriptions shown in Consolidated Freight Classification No. 3, I. C. C. No. 15. The classification ratings in Official, Southern and Western Classifications compared with bases provided in suspended tariff I. C. C. A-424 are also shown.

Ex. 14 (Doss).—5-page statement showing, in cents per 100 pounds, present and suspended rates on rosin, carloads, and turpentine, carloads, from South Atlantic ports, Carolina territory, Southeastern Territory, Louisville & Nashville and Southern Railway stations to Cincinnati, Ohio.

Ex. 15 (Doss).—1-page statement showing, in cents per 100 pounds, the rates on rosin and turpentine, carloads, from Carbur, Fla. to Chicago and Cairo, Ill., St. Louis, Minneapolis, and St. Paul, in effect as of June 25, 1918;

what the rates would be increased under Ex Parte 74, 58 I. C. C., 220, reduced 10% under Reduced Rates, 1922, I. C. C. Docket No. 13293, 68 I. C. C., 676, compared with the present and suspended rates.

Ex. 16 (Doss).—1-page statement showing, in cents per 100 pounds, present and suspended rates on rosin and turpentine, carloads, from Jacksonville and New Orleans to Kalamazoo, Chicago, Milwaukee, Jackson and Detroit, Toledo and Grand Rapids.

Ex. 17 (Doss) was withdrawn.

[fol. 171] Ex. 18 (Doss).—3-page statement, showing in cents per 100 pounds, present and suspended rates on rosin and turpentine, carloads, from representative points in southeastern and Carolina territories to representative points in Central Freight Association and Western Trunk Line territories, including Chicago, Detroit, Milwaukee, Grand Rapids and Kalamazoo.

Ex. 19 (Doss).—1-page statement showing short line distances via workable routes from points in North Carolina, South Carolina, Georgia, Florida, Alabama and Louisiana, to Buffalo, Pittsburgh, Wheeling, Cleveland, Columbus, Cincinnati, Richmond, Va., and Kenova, W. Va.

Ex. 20 (Doss).—1-page statement showing distances and, in cents per 100 pounds, present and suspended rates on naval stores, carloads, from Jacksonville and New Orleans, to representative destinations, including Cincinnati, St. Louis, Milwaukee, Chicago and Kalamazoo. The amounts by which the Jacksonville rates exceed those from New Orleans to those points are also shown.

Ex. 21 (Doss).—1-page statement showing present and suspended rates on rosin and turpentine, carloads, from representative Southeastern and Carolina territory shipping points to Cincinnati as representative of the Ohio river crossings.

Ex. 22 (Doss).—One-page statement showing rates on rosin and turpentine, carloads, from representative points on the Atlantic Coast Line Railroad in Florida, Georgia and Alabama to Baltimore, Md., via Jacksonville or Savannah and steamer.

Ex. 23 (Doss).—2-page statement showing present and suspended rates on naval stores, carloads, from representative stations on Atlantic Coast Line Railroad in Georgia and Alabama to Cincinnati, compared with rates paid when concentrated at Savannah and Jacksonville and subsequently shipped to Cincinnati.

Ex. 24 (Doss).—2-page statement showing present rates on rosin and turpentine, carloads, from Savannah, Ga., and Jacksonville, published by Merchants and Miners Transportation Company (via water and rail) compared with present and suspended rates via all rail routes to points in Central Freight Association territory, including Chicago, Kalamazoo and Grand Rapids.

[fol. 172] Ex. 25 (Doss).—2-page statement showing suspended rates on rosin and turpentine, carloads, from representative shipping points on the Atlantic Coast Line Railroad to Cincinnati, Chicago and Kalamazoo, compared with present rates on lumber, carloads, from and to the same points. It is stated to be the purpose of the exhibit to show that the grouping of origin territory in connection with the suspended rates on naval stores is substantially the same as is observed in connection with the rates on lumber, carloads.

Ex. 26 (Doss).—2-page statement showing suspended rates on rosin and turpentine, carloads, from representative shipping points on the Atlantic Coast Line Railroad to Cincinnati and Chicago, compared with the present rates on cotton from and to the same points. It is stated to be the purpose of the exhibit to show that the grouping of origin territory in connection with the suspended rates on naval stores is substantially the same as is observed in connection with the rates on cotton, carloads.

Ex. 27 (Doss).—2-page statement showing suspended rates on rosin and turpentine, carloads, from representative shipping points on the Atlantic Coast Line Railroad to Cincinnati, Chicago and Kalamazoo, compared with present rates on vegetables, not otherwise specified, carloads, from and to the same points. It is stated to be the purpose of the exhibit to show that the grouping of origin territory in connection with the suspended rates on naval

stores is substantially the same as is observed in connection with the rates on vegetables N. O. S., carloads.

Ex. 28 (Doss).—1-page statement showing suspended rates on rosin and turpentine, carloads, from representative shipping points on the Atlantic Coast Line Railroad to Cincinnati, Chicago and Kalamazoo, compared with present rates in cents per standard box or crate on oranges, carloads, from and to the same points. It is stated to be the purpose of the exhibit to show that the grouping of origin territory in connection with the suspended rates on naval stores is substantially the same as is observed in connection with the rates on oranges, carloads.

Ex. 29 (Doss).—2-page statement showing suspended rates on rosin and turpentine, carloads, from representative shipping points on the Atlantic Coast Line Railroad to Cincinnati, Chicago, and Kalamazoo, compared with present class rates from and to the same points.

Ex. 30 (Doss).—2-page statement showing rates on naval stores, applicable intrastate between points on the Atlantic Coast Line Railroad in the states of Florida, Alabama, Georgia, South Carolina and North Carolina. The rates published in Agent Glenn's Florida Basis Book No. 9, I. C. C. A-368, from Florida points to Jacksonville are on basis of the intrastate Florida mileage scale shown herein.

Ex. 31 (Doss).—6-page resumé in form of an exhibit dealing with conditions of operation in Florida, giving reference to various decisions of the Florida Commission bearing on that subject.

Ex. 32 (Doss).—1-page extract from 18th annual report of Florida Commission for year ending February 28, 1915, entitled "Comparison of Florida Rates and Conditions."

[fol. 173] Ex. 33 (Doss).—1-page statement from the office of the Comptroller, Atlantic Coast Line Railroad showing by states tons one mile, per mile of road operated for years ended December 31, 1918-1922, inclusive, with populations of the states.

Ex. 34 (Doss).—3-page statement showing distances and rates on rosin and turpentine, carloads, from southern points to points in the east, compared with suspended rates

from representative points in Southeast and Carolina territory to Ohio and Mississippi River crossings and Central Freight Association territory, including Cincinnati, St. Louis, Chicago, Milwaukee, Detroit, Vincennes and Terre Haute.

Ex. 35 (Doss).—1-page statement showing present rates on rosin, carloads, from south Atlantic ports to points in Southern territory at which paper mills are located, compared with suspended rates to Cincinnati from the same points.

Ex. 36 (Doss).—1-page statement showing rates and revenue per car on tar, in tank carloads, from south Atlantic ports to Birmingham, rate as of June 24, 1918, found not unreasonable by Interstate Commerce Commission in Docket No. 9443, 57 I. C. C., 410-413.

Ex. 37 (Doss).—1-page statement showing the suspended rates on rosin and turpentine, carloads, from Dothan, Ala., to Chicago, compared with rates on glucose, carloads, from Chicago to Dothan, published in compliance with order of the Commission in Docket 10867, 60 I. C. C., 203-220.

Ex. 38 (Doss).—2-page statement showing suspended rates on rosin, crude wood oil, pine gum, pine tar oil, pine pitch, pyroligneous liquor, rosin dross and rosin oil, carloads, from and to representative points, including Cincinnati, Detroit, Chicago and Milwaukee, compared with rates on sulphuric acid in tank carloads, minimum 80,000 pounds, from Southern points to Hopewell, Va., not found unreasonable or unjustly discriminatory by the Commission in 57 I. C. C., 54.

Ex. 39 (Doss).—1-page statement showing suspended rates and per car mile earnings on turpentine, carloads, from New Orleans, Jacksonville, Valdosta, Ga., and Fayetteville, N. C., to Chicago, Cincinnati and other points, (average weight 54,000 pounds) compared with rates and per car mile earnings on alcohol, carloads, in wood or tank cars, (average weight 54,000 pounds).

Ex. 40 (Doss).—1-page statement showing distances and suspended rates on rosin and turpentine, carloads, from Jacksonville to representative points of destination, including Cincinnati, Detroit, St. Louis, Louisville and Cairo,

compared with the rates on petroleum and petroleum products, carloads, from Jacksonville to the same destinations.

[fol. 174] Ex. 41 (Doss).—2-page statement showing suspended rates and per car mile earnings on rosin and turpentine, carloads using average weights of 46,000 and 54,000 pounds respectively, from representative points of origin, Jacksonville, Valdosta, Ga., Dothan, Ala., and Fayetteville, N. C., to representative points of destination, Cincinnati, Chicago, Kalamazoo, Indianapolis, Peoria and Buffalo, compared with rates and per car mile earnings on lubricating oil, carloads, in tank cars (average weight 53,000 pounds) from Franklin, Pa., to representative points of destination, Wilmington, N. C., Jacksonville, Savannah, Atlanta, Macon and Augusta, and on petroleum and its products, carloads, from Lawrenceville, Ill., to Rocky Mount, N. C., (average weight 52,000 pounds.)

Ex. 42 (Doss).—3-page statement showing distances and suspended rates on rosin and turpentine, carloads, from representative points of origin, Dothan, Ala., Valdosta, Ga., and Jacksonville, to representative points of destination, Cincinnati, Indianapolis, Peoria, Chicago, Kalamazoo and Buffalo, and the averages thereof compared with distances and rates on petroleum and petroleum products, carloads, from representative points of origin, Memphis, Vicksburg, New Orleans, to representative points of destination, Columbia, S. C., Weldon, N. C., and Franklin, Va., and the averages thereof.

Ex. 43 (Doss).—1-page statement showing suspended rates on rosin and turpentine, carloads, from representative points of origin, Jacksonville, Valdosta and Dothan, to Ohio and Mississippi River crossings, Cincinnati, Cairo, Evansville and St. Louis, compared with rates on peanuts, carload, minimum weight 30,000 pounds, from and to the same points.

Ex. 44 (Doss).—2-page statement showing suspended rates and per car mile earnings on rosin and turpentine, carloads, using average weights of 46,000 pounds and 54,000 pounds, respectively, from representative points of origin, Jacksonville, Valdosta and Dothan, to representative points of destination, Cincinnati, Chicago, Peoria, Buffalo, Kalamazoo and Indianapolis, compared with rates and per car

mile earnings on peanuts, carloads, minimum weight 30,000 pounds, from Jacksonville to the same points. No rates indicated on peanuts to Kalamazoo.

Ex. 45 (Doss).—2-page statement showing suspended rates and per car mile earnings on turpentine, carloads, (average weight 54,000 pounds) in tank cars compared with rates and per car mile earnings on cottonseed oil, carloads, in tank cars, (average weight 60,000 pounds) from Jacksonville, Valdosta, and Fayetteville, to Cincinnati, Chicago, Peoria, Buffalo and Indianapolis.

[fol. 175] Ex. 46 (Doss).—1-page statement showing suspended rates and per car mile earnings on rosin and turpentine, carloads, using average weights of 46,000 and 54,000 pounds, respectively, from representative points of origin, Jacksonville, Valdosta, Dothan and Fayetteville, to representative points of destination, Cincinnati, Chicago, Kalamazoo and Peoria, compared with rates and per car mile earnings on scrap iron, carloads, average weight 80,000 pounds, from Savannah, Ga., to Eastern port cities.

Ex. 47 (Doss).—2-page statement showing suspended rates and per car mile earnings on rosin, using average weight of 46,000 pounds, and turpentine, using average weight of 54,000 pounds, from Jacksonville, Valdosta and Dothan to representative destinations, Cincinnati, Chicago, Kalamazoo, Indianapolis, Peoria and Buffalo, compared with rates and per car mile earnings on hides, green salted, carloads, using average weight of 52,000 pounds, from Waycross, Ga., to Cairo, St. Louis and Cincinnati.

Ex. 48 (Doss).—2-page statement showing suspended rates and per car mile earnings on rosin and turpentine, carloads, using average weights of 46,000 and 54,000 pounds, respectively, from Jacksonville, Valdosta, Dothan and Fayetteville, to representative destinations, Cincinnati, Chicago, Kalamazoo, Peoria, Buffalo and Indianapolis, compared with rates and per car mile earnings on lard compounds or substitutes, in bulk in barrels, hogsheads, pails, firkins or tubs, or oils, cooking or edible (products of cottonseed oils, cocoanut oils, soya bean oil or peanut oil) in bulk or barrels, minimum carload weight 30,000 pounds, using average weight of 40,000 pounds, from Jacksonville,

Athens, Atlanta and Macon to Cincinnati, Cairo, St. Louis, Toledo, Cleveland and Columbus.

Ex. 49 (Doss).—2-page statement showing suspended rates and per car mile earnings on rosin and turpentine, carloads, using average weight of 46,000 and 54,000 pounds, respectively, from Jacksonville, Valdosta, and Dothan to representative destinations, Cincinnati, Chicago, Kalamazoo, Indianapolis, Peoria and Buffalo, compared with rates and car-mile earnings on tallow, in barrels or casks, minimum carload weight 30,000 pounds, using average weight of 40,000 pounds, from Albany, Ga., Moultrie, Ga., and Jacksonville to Cincinnati, Cairo and St. Louis.

Ex. 50 (Doss).—1-page statement showing suspended rates and per car mile earnings on rosin, carloads, (average weight 46,000 pounds) compared with present rates and per car mile earnings on lumber, carloads, using minimum weight of 50,000 pounds, from Jacksonville, Valdosta, Fayetteville and Dothan to Cincinnati, Chicago, Kalamazoo, Indianapolis, Peoria and Buffalo.

[fol. 176] Ex. 51 (Doss).—1-page statement showing distances, present rates, revenue per car and per car per mile on petroleum and petroleum products from Cincinnati, Cairo, Memphis and New Orleans to representative points in Southeastern territory, Atlanta and Bainbridge, Ga., Dothan, Birmingham and Jacksonville. Average weight of 55,080 pounds per car as shown by I. C. C. Bureau of Statistics "Summary of Freight Commodities" for quarter ending March 31, 1923.

Ex. 52 (Doss).—1-page statement showing distances present rates, revenue per car and per car per mile on road oil, carloads, from Cincinnati, Cairo, Memphis and New Orleans to representative points in Southeastern territory, Atlanta, Bainbridge, Dothan, Birmingham and Jacksonville. Average weight of 72,740 pounds per car as shown by I. C. C. Bureau of Statistics "Summary of Freight Commodities" for quarter ending March 31, 1923.

Ex. 53 (Doss).—1-page statement showing distances, present rates, revenue per car per mile on asphalt, coal tar and coal pitch, carloads, from Cincinnati, Cairo, Memphis and New Orleans to representative points in Southeastern

territory, Atlanta, Bainbridge, Dothan, Birmingham and Jacksonville. Average weight of 72,740 pounds per car as shown by I. C. C. Bureau of Statistics "Summary of Freight Commodities" for quarter ending March 31, 1923.

Ex. 54 (Doss).—1-page statement showing distances, present rates, revenue per car and per car per mile on molasses and syrup, (estimated weight 80,000 lbs.) from Cincinnati, Cairo, Memphis and New Orleans, to principal syrup canning points in southeastern territory, Atlanta, Columbus, Ga., Birmingham, Montgomery and Dothan.

Ex. 55 (Doss).—2-page statement showing suspended rates and per car mile earnings on rosin and turpentine, carloads, from Jacksonville to Cincinnati, a distance of 804 miles, compared with rates and per car mile earnings on other commodities between the same points.

Ex. 56 (Doss).—1-page statement showing suspended rates and per car mile earnings on rosin and turpentine, carloads, from Valdosta, Ga., to Cincinnati, a distance of 715 miles, compared with rates and per car mile earnings on other commodities, building material, canned goods, molasses, etc.

Ex. 57 (Doss).—2-page statement showing suspended rates on naval stores, carloads, from Fayetteville, N. C., to representative destinations, Nashville, Cincinnati, Louisville, St. Louis, Milwaukee and Buffalo, compared with rates on certain other commodities, which have moved in opposite direction during August, 1923. The per car earnings using average weights of 46,000 lbs. on rosin and 54,000 lbs. on turpentine and actual weight of the other commodities are also shown.

[fol. 177] Ex. 58 (Doss).—3-page statement showing the suspended rates on naval stores, carloads, from Jacksonville to representative destinations, Cincinnati, Cairo, Evansville, St. Louis, Buffalo and Pittsburgh, compared with rates on certain other commodities which have moved in the opposite direction during August, 1923. The per car earnings using average weights of 46,000 lbs. on rosin and 54,000 lbs. on turpentine and actual weights of the other commodities are also shown.

Ex. 59 (Doss).—2-page statement showing the suspended rates on naval stores, carloads, from Dothan to representa-

tive destinations, Memphis, Chicago, Nashville, Cincinnati and Pittsburgh, compared with the rates on certain other commodities which have moved in the opposite direction during August, 1923. The per car earnings using average weights of 46,000 lbs. on rosin and 54,000 lbs. on turpentine and actual weights on the other commodities are also shown.

Ex. 60 (Doss).—1-page statement showing the suspended rates on naval stores, carloads, from Thomasville, Ga., to representative destinations, Nashville, Cairo, Memphis, East St. Louis and Pittsburgh, compared with rates on certain other commodities which have moved in the opposite direction during August, 1923. The per car earnings using average weights of 46,000 lbs. on rosin and 54,000 lbs. on turpentine and actual weights on the other commodities are also shown.

Ex. 61 (Doss).—1-page statement showing the suspended rates on naval stores, carloads, from Valdosta, Ga., to representative destinations, Cincinnati, East St. Louis and Omaha, compared with rates on certain other commodities which have moved in the opposite direction during August, 1923. The per car earnings using average weights of 46,000 lbs. on rosin and 54,000 lbs. on turpentine and actual weights on the other commodities are also shown.

Ex. 62 (Doss).—1-page statement showing the suspended rates on naval stores, carloads, from Orlando, Fla., to representative destinations, Cairo and Cincinnati, compared with rates on certain other commodities which have moved in the opposite direction during August, 1923. The per car earnings using average weights of 46,000 lbs. on rosin and 54,000 lbs. on turpentine and actual weights on the other commodities are also shown.

Ex. 63 (Doss).—5-page statement showing present and suspended rates on commodities included in the naval stores list, other than rosin and turpentine, from principal wood distillation plants in Carolina and Southeastern territories, Fayetteville, Savannah, Collins, Allenhurst and Valdosta, Ga., and Jacksonville, Fla., to representative destinations, including Detroit, Chicago, Cincinnati, St. Louis, Milwaukee, St. Paul and Kansas City.

[fol. 178] Ex. 64 (Doss).—2-page statement showing present and suspended rates on rosin and turpentine, less than

carloads, from representative stations on the Atlantic Coast Line Railroad, in Georgia and Alabama, Savannah, Allenhurst and Dothan, to Cincinnati and Chicago.

Ex. 65 (Doss).—3-page statement showing present and suspended rates on rosin and turpentine, less than carloads, from representative stations on the Atlantic Coast Line Railroad, in both North and South Carolina, including Fayetteville, Pembroke and Stanley, N. C., and Florence, S. C., (Savannah, Ga.) to Cincinnati, Ohio.

Ex. 66 (Doss).—1-page statement showing how Fourth section violations as to origin territory have been eliminated, using Cincinnati as representative destination.

Ex. 67 (Doss).—1-page statement showing present and suspended rates on naval stores from representative Atlantic Coast Line Railroad stations in North and South Carolina, including Fayetteville, Pembroke and Stanley, N. C., and Florence, S. C. (Savannah, Ga.) to Cincinnati, showing how Fourth section violations have been eliminated in the suspended revision.

Ex. 68 (Doss).—1-page statement showing total movement of naval stores shipped via the Central of Georgia Railway during the first two weeks in October and December, 1922, and February, April, June and August, 1923, showing weights, also rates charged, compared with suspended rates, points of origin including Savannah, Bowdon, Ga., Dozier and Andalusia, Ala., and destinations, Cairo, Cincinnati, Chicago and Milwaukee.

[fol. 179] C. L. Hinnant, Assistant General Freight Agent, Norfolk Southern Railway, Norfolk, Va., testified with respect to the Fourth Section situation, and in the course of his testimony introduced and testified concerning the following exhibits:

Ex. 69 (Hinnant).—Large map showing the Fourth section situation. It shows the origin points of naval stores products in Southern and Southeastern states and destination points north of the Ohio River.

Ex. 70 (Hinnant).—1-page statement showing Fourth section violations and relief desired from Mississippi Val-

ley, Southeastern and Carolina territories to Buffalo-Pittsburgh territory, Central Freight Association points and points based thereon, Buffalo, Cleveland, Ft. Wayne and Columbus, via Norfolk Southern Railroad and connections, representative of other origins and destinations in same territories.

Ex. 71 (Hinnant).—6-page statement showing operating and traffic conditions, miles operated, total railway operating revenues and expenses, freight revenues, operating ratios, railway and net railway operating income, traffic density, miles hauled of freight and revenue per ton of freight, for 30 lines for twelve months ending, December 31, 1920, 1921, 1919, 1918, 1917 and 1916.

Ex. 72 (Hinnant).—1-page statement showing comparison of revenue per ton per mile on rosin and turpentine versus revenue per ton per mile on other commodities on traffic moving in connection with the Norfolk Southern Railroad from New Orleans and Fayetteville, N. C., to Buffalo and Cleveland.

W. D. Cook, General Freight Agent, Gulf & Ship Island Railroad, appearing in behalf of all the Mississippi Valley carriers (except the Louisville & Nashville and the New Orleans & Northeastern Railroad), in the course of his testimony introduced and testified concerning the following exhibits:

[fol. 180] Ex. 73 (Cook).—Map showing territory of production of naval stores in the Mississippi Valley. The map covers the territory bounded by the Mississippi River from Vicksburg, Miss., to New Orleans on the west, by the Gulf of Mexico from New Orleans to Mobile, Ala., on the south, from Mobile to Meridian, Miss., on the east, and from Meridian to Vicksburg on the north.

Ex. 74 (Cook).—1-page statement showing distances, also present and suspended rates on naval stores, carloads, from Gulf and South Atlantic ports to Cincinnati, Ohio.

Ex. 75 (Cook).—21-sheet statement showing present rates, also rates published in Glenn's Tariff A-424 (I. C. C.) and suspended by order of the Commission in I. & S. Docket

No. 1900, from New Orleans, Gulfport and Mobile to Cairo, East St. Louis, Cincinnati, Detroit, Kalamazoo, Grand Rapids, etc.

Ex. 76 (Cook).—9-page statement showing carload rates on naval stores from representative producing points in the Mississippi Valley territory, including Howison, Miss., Collins and Mize, Miss., Laurel, Miss., Wilmer, Ala., and other points, to Gulf ports, Mobile and Gulfport, plus the present carload rates from Gulf ports to representative points, including Memphis, Cairo, Detroit, St. Louis, Chicago and Kalamazoo, compared with the proposed carload rates from such producing points to the same destinations.

L. L. Drescher, Assistant to the Vice-President in Charge of Traffic, Louisville & Nashville Railroad, in the course of his testimony introduced and testified regarding the following exhibits:

Ex. 77 (Drescher).—1-page statement showing the present and proposed rates on rosin and turpentine, carloads, from Jacksonville, Savannah, New Orleans, Mobile and Pensacola to Cincinnati.

Ex. 78 (Drescher).—1-page statement showing rates on classes 1 to 6 and A to D, inclusive, from Jacksonville, Savannah, New Orleans, Mobile and Pensacola to Cincinnati.

[fol. 181] Ex. 79 (Drescher).—1-page statement of the present class rates and the proposed rates on rosin and turpentine, carloads, from the Gulf ports, New Orleans, Mobile and Pensacola, to Cincinnati, Louisville, Evansville and St. Louis.

Ex. 80 (Drescher).—2-sheet statement of the present and proposed rates on rosin and turpentine, carloads, from agency stations on the Louisville & Nashville Railroad south of Montgomery to Cincinnati, Louisville, Evansville and St. Louis.

Ex. 81 (Drescher).—2-sheet statement of the present and proposed rates on rosin and turpentine, carloads, from agency stations on the Louisville & Nashville Railroad south

of Montgomery, to representative destinations in the territory north of the Ohio River, including Chicago, Milwaukee, Detroit, Grand Rapids and Kalamazoo.

Ex. 82 (Drescher).—2-sheet statement of the present and proposed rates on rosin and turpentine, carloads, from agency stations on the Louisville & Nashville Railroad south of Montgomery to Buffalo and Pittsburgh.

Ex. 83 (Drescher).—2-sheet statement of the present and proposed rates on rosin and turpentine, carloads, from Pensacola and Atlanta & St. Andrews Bay Railway, Birmingham, Columbus and St. Andrew Railroad, Marianna and Blountstown Railroad and Apalachicola Northern Railroad to Ohio river crossings and representative Central Freight Association destinations, including Cincinnati, Pittsburgh, Chicago, Milwaukee, Grand Rapids and Kalamazoo.

Ex. 84 (Drescher).—8-page statement comprising the present and proposed rates on rosin and turpentine, carloads, from Gulf ports, Mobile, Bay Minette, New Orleans, Pensacola, etc., and representative Louisville & Nashville Railroad producing points to Cincinnati, with the rates from producing points on other lines in Southeastern and Mississippi Valley territory.

S. C. Matthews, Assistant Freight Traffic Manager, Pennsylvania Railroad, Southwestern Region, St. Louis, in [fol. 182] the course of his testimony introduced and testified concerning the following exhibits:

Ex. 85 (Matthews).—11-page statement showing the chronological history of the specific* on rosin from the various Ohio River crossings to representative points in Central Freight Association territory, including Chicago, Detroit, Grand Rapids, and Kalamazoo, as compared with the sixth-class rate from the same gateways to the same points.

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*In its first report in this case, 87 I. C. C., 740, the Commission defined "specific" as follows (p. 742): The specific is said to be neither a local rate nor a division of the through rate, but in the nature of a proportional rate published to apply on this particular class of traffic.

Ex. 86 (Matthews).—11-page statement showing the chronological history of the specifics on turpentine from the various Ohio river crossings to representative points in Central Freight Association territory, including Chicago, Detroit, Grand Rapids, and Kalamazoo, as compared with the sixth-class rate from the same gateways to the same points.

As to Exhibits 85 and 86, the Examiner who took the testimony ruled as follows (October 3, 1923): "I will rule that I will accept these exhibits at this time for the purpose of showing the historical, chronological situation of the specifics, and so forth, and I will reserve my ruling on the others until later in the hearing. But at this time they are received simply for that purpose and not as a justification for the through rate."

Also (October 5, 1923): "I might say that my ruling on Matthew's Exhibits 85 and 86 was deferred the other day on the question of justifying the measure of the rate north of the river. I sustain the objection to those exhibits for that purpose, and admit them, as I stated before, for the purpose of showing the historical, chronological situation."

[fol. 183] R. J. Doss (recalled) further testified regarding rates from points on Southern Railway and New Orleans & Northeastern Railroad and introduced the following exhibits:

Ex. 87 (Doss).—1-page statement showing present and suspended rates, carloads, on rosin, pitch and turpentine, in cents per 100 pounds, from New Orleans and intermediate New Orleans & Northeastern Railroad stations and intermediate Alabama Great Southern Stations to representative destinations, including Chicago, Cincinnati, Cleveland and Kalamazoo.

Ex. 88 (Doss).—1-page statement showing present and suspended rates, in cents per 100 pounds, on rosin and turpentine, from Charleston and Savannah and intermediate Southern Railway stations to representative destinations, including Chicago, Cincinnati, Cleveland and Kalamazoo.

Ex. 89 (Doss).—1-page statement showing present and suspended rates on rosin, pitch and turpentine, in cents per 100 pounds, from Mobile and Intermediate Southern Railway stations to representative destinations, including Chicago, Cincinnati, Cleveland and Kalamazoo.

Ex. 90 (Doss).—2-page statement showing present and suspended rates, on rosin and turpentine, in cents per 100 pounds, from Jacksonville, Brunswick, Savannah and intermediate Southern Railway stations and intermediate Georgia, Southern & Florida Railway stations to representative destinations, including, among others, Chicago, Cincinnati, Cleveland and Kalamazoo.

J. E. Bryan, Traffic Manager, Wisconsin Traffic Association, Chicago, in the course of his testimony offered and testified concerning the following exhibits:

Ex. 91 (Bryan).—1-sheet list showing production of news print, wrapping, writing, wall, toiler, printing, bags and bagging, and tissue paper, by 37 manufacturers, located in Wisconsin (one in Michigan) represented by Wisconsin Traffic Association, with total capacity production, daily, of 2,448 tons of paper.

[fol. 184] Ex. 92 (Bryan).—1-sheet list showing rosin consumed yearly by 11 paper manufacturers represented by Wisconsin Traffic Association; total, 3,444 tons.

Ex. 93 (Bryan).—1-sheet statement showing history for past 10 years, of rates, in cents per 100 pounds, on rosin, carloads, from Gulfport, Mobile, Pensacola, Meridian, New Orleans, and other points, to Marinette, Wis., Menominee, Mich., and other Fox River Group points (Wisconsin) and Milwaukee.

Ex. 94 (Bryan).—1-sheet statement comparing present and proposed carload rates, in cents per 100 pounds, on rosin, from Gulfport, Mobile, Pensacola, New Orleans, Columbia, Miss., Fernwood, Miss., and Foxworth, Miss., among other points, to Fox River Group (Wisconsin) Menominee, Mich., and Eau Claire, Rhinelander, and other points in Northern Wisconsin.

Ex. 95 (Bryan).—1-sheet statement showing comparison of present and proposed carload rates, in cents per 100 pounds, on rosin, from Alabama, Tennessee & Northern Railroad stations, Gulf & Ship Island stations, Mobile & Ohio stations, and other stations on lines in the Southern and Southeastern sections of the United States to Marinette, Wis., Menominee, Mich., and other Fox River Group points (Wisconsin) and Milwaukee.

L. Richards, called by F. F. Dalley Co., Inc., Buffalo, large users of turpentine, in the course of his testimony [fol. 185] introduced and testified regarding the following exhibit:

Ex. 96 (Richards).—2-sheet statement showing 33 tank cars unloaded at F. F. Dalley Company's Buffalo plant during 1922, points and dates of shipments, numbers and initials, bills of lading weights, gallons, rate, increase in freight per car, total gallons unloaded as 266,835, and total increase in freight on increased rates as $5,983.17.

Frederick J. Arthurs, called by Larkin & Co., Inc., Spencer, Kellogg & Sons, Inc., Pratt & Lambert and the National Association of Purchasing Agents of New York City, testified concerning the effect of the proposed increases in the rates on Buffalo and Buffalo interests, the competition in the soap business and the effect the increased rates would have on that industry.

J. B. Morrow, called by Pensacola interests, testified concerning the increased revenues to the carriers should the proposed rates become effective. In the course of his testimony, Mr. Morrow introduced and testified regarding the following exhibits:

Ex. 97 (Morrow).—4-sheet recapitulation, showing comparison of freight revenue, under present and proposed rates, or an increase of $68,654.64, or 29.4%, on naval stores from Pensacola during the year 1922, to points in Ohio, Michigan, Indiana, Illinois, Wisconsin, Pennsylvania, New York and Iowa.

Ex. 98 (Morrow).—3-sheet recapitulation, showing comparison of freight revenue, under present and proposed rates, or an increase of $760.12, or 3.6% on naval stores, from Bay Minette, Ala., during the year 1922, to points in Ohio, Michigan, Indiana, Illinois, Wisconsin, Pennsylvania, New York and Iowa.

W. E. Willey, in charge of Rate and Tariff department of Procter & Gamble Company, was called by that company and by Globe Soap Company, Colgate & Co., Waltke & Co., Jas. S. Kirk, Van Camp Packing Company, N. K. Fairbank [fol. 186] Company, and in the course of his testimony, Mr. Willey introduced and testified concerning the following exhibits:

Ex. 99 (Willey).—1-sheet statement showing the average, for mileage blocks of 25 and 50 miles, of all rates on rosin published in 8 tariffs listed in the exhibit, from interior points to Gulf and South Atlantic ports, and Distance Scale constructed on basis of these average rates.

Ex. 100 (Willey).—1-sheet statement comparing average distance scale on rosin, carloads, with scales on other commodities, coal, cement and lime, and a comparison of the gradation used in constructing the scales.

Ex. 101 (Willey).—7-sheet statement showing comparison of present and proposed rates on rosin, carloads, with rates based on distance scale, from New Orleans, Mobile, Pensacola, Jacksonville, Savannah, and other points, to Cincinnati, St. Louis, Louisville, Chicago, Detroit, Buffalo and Hamilton, Ontario.

Ex. 102 (Willey).—1-sheet statement comparing present and proposed rates on rosin, carloads, with rates on lumber carloads, from points in Southern and Southeastern states, including New Orleans, Jacksonville, Savannah, Mobile and Pensacola, to Louisville, Ky.

[fol. 187] Ex. 103 (Willey).—1-sheet statement, comparing car earnings on rosin, carloads, based on present and proposed rates and on the average distance scale rates with car earnings on lumber, carloads, at present rates, from points in Southern and Southeastern states, including New Orleans, Mobile, Pensacola, Jacksonville, and Savannah, to Louisville, Ky.

E. B. GAINES, Savannah, Georgia, representing naval stores interests located at Savannah, Brunswick and other south Atlantic ports, as well as producers in the interior south Atlantic section, numbering about 300, in the course of his testimony introduced and testified concerning the following exhibits:

Ex. 104 (Gaines) consists of over 300 mimeographed letters addressed by various dealers in naval stores throughout the country to Thomas E. Grady Company, Savannah, granting powers of attorney to represent the senders of the letters in proceedings before the Interstate Commerce Commission dealing with revision in rates on naval stores.

[fol. 188] Ex. 105 (Gaines) is form letter addressed to various dealers in naval stores throughout the country, with form of power of attorney attached, to be filled in and returned to Thomas E. Grady Company, Savannah, relating to proposed revision in rates on naval stores.

Ex. 106 (Gaines) (introduced by Mr. Gwathmey of counsel for the carriers in this proceeding).—3-sheet letter addressed to the Agent of the Central of Georgia Railway at Herndon, Ga., by the General Freight Agent of that company, requesting the local agent to furnish to producers and dealers in naval stores at or in the vicinity of Herndon a memorandum of rates enclosed with the letter and entitled "Statement showing present and suspended rates on naval stores, carloads, from points on the Central of Georgia Railway to representative points in the Central West," Cincinnati, Chicago, Grand Rapids, Milwaukee, Kalamazoo and St. Louis.

Ex. 107 (Gaines).—1-sheet statement showing production of naval stores for the years 1921 and 1922 in States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Texas. For the two years a total of 486,187 barrels of turpentine were produced, and a total of 1,654,242 barrels of rosin.

Ex. 108 (Gaines).—1-sheet statement of carload shipments of rosin from Pensacola, Brunswick, Jacksonville and Savannah, to points in Central Freight Association terri-

tory, including Cleveland, Detroit, Buffalo, Chicago, Indianapolis, and Alpena, Mich., showing date of shipment, car initial and number, origin, destination, contents and weight.

Ex. 109 (Gaines).—1-sheet statement of carload shipments of rosin from Pensacola, Brunswick, Jacksonville and Savannah, to Ohio River crossings and points in Central Freight Association territory, including Detroit, Cleveland, Flint, Chicago, Rochester, Cincinnati and Indianapolis, showing date of shipment, car initial and number, origin, destination, contents and weight.

Ex. 110 (Gaines).—1-sheet statement of mileages from Savannah, Jacksonville, Charleston, Brunswick, New Orleans, Mobile, Pensacola and Gulfport, to Cincinnati, Louisville, Evansville, Cairo and St. Louis; showing also mileages between each point and average of all south Atlantic ports and Gulf ports, and differences of average mileages between south Atlantic ports and Gulf ports.

[fol. 189] Ex. 111 (Gaines).—1-sheet statement showing basis for proposed rates on rosin and turpentine, carloads, from south Atlantic ports, Gulf ports, Southeastern and Mississippi Valley territory, Trunk Line and Short line stations to Ohio and Mississippi River crossings and Central Freight Association territory.

Ex. 112 (Gaines).—1-sheet statement showing present, suspended and proposed rates on rosin and turpentine, carloads, from south Atlantic and Gulf ports to Cincinnati, Ohio, and differentials to other Ohio River crossings—Memphis, Nashville and St. Louis.

Ex. 113 (Gaines).—1-sheet statement of routes used to construct mileages from Gulf ports and south Atlantic ports to Ohio and Mississippi river crossings and Nashville.

Ex. 114 (Gaines).—1-sheet statement of rates on rosin, carloads, from Savannah, Brunswick and Jacksonville, to Cincinnati, Louisville, Evansville, Cairo, St. Louis, Memphis and Nashville.

Ex. 115 (Gaines).—1-sheet statement of rates on turpentine, carloads, from Savannah, Brunswick, and Jack-

sonville, to Cincinnati, Louisville, Evansville, Cairo, St. Louis, Memphis and Nashville.

Ex. 116 (Gaines).—1-sheet statement of rates on rosin from interior Southeastern points, including Jesup, Eastman and Lumber City, Ga., to Cincinnati, Louisville, Evansville, Cairo, Memphis, St. Louis and Nashville, showing the average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 117 (Gaines).—3-sheet statement of rates on turpentine from interior Southeastern points, including Jesup, Eastman and Lumber City, Ga., to Cincinnati, Louisville, Evansville, Cairo, Memphis, St. Louis and Nashville, showing the average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 118 (Gaines).—1-sheet statement of rates on rosin from interior Southeastern points, including Bellville, Alamo, Abbeville and Fitzgerald, Ga., to Cincinnati, Louisville, Evansville, Cairo, Memphis, St. Louis and Nashville, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 119 (Gaines).—3-sheet statement of rates on turpentine from interior Southeastern points, including Bellville, Alamo, Abbeville and Fitzgerald, Ga., to Cincinnati, Louisville, Evansville, Cairo, Memphis, St. Louis and Nashville, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

[fol. 190] Ex. 120 (Gaines).—1-sheet statement of rates on rosin from Central of Georgia stations, including, Oliver, Rocky Ford and Midville, Ga., to Cincinnati, Louisville, Evansville, Cairo, St. Louis, Memphis and Nashville, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 121 (Gaines).—2-sheet statement of rates on turpentine from Central of Georgia stations, including Oliver, Rocky Ford and Midville, Ga., to Cincinnati, Louisville,

Evansville, Cairo, St. Louis, Memphis and Nashville, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 122 (Gaines).—1-sheet statement of rates on turpentine from interior Atlantic Coast Line stations, including Ludowici, Valdosta, and Screven, Ga., to Cincinnati, Louisville, Evansville, Cairo, St. Louis, Memphis and Nashville, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 123 (Gaines).—1-sheet statement of rates on rosin from interior Atlantic Coast Line stations, including Ludowici, Valdosta, and Screven, Ga., to Cincinnati, Louisville, Evansville, Cairo, St. Louis, Memphis and Nashville, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 124 (Gaines).—1-sheet statement of rates on rosin from New Orleans, Mobile and Pensacola to Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and St. Louis, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 125 (Gaines).—1-sheet statement of rates on turpentine from New Orleans, Mobile and Pensacola, to Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville and St. Louis, showing average mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 126 (Gaines).—1-sheet statement of rates on rosin from Savannah, Jacksonville and Brunswick to Chicago, Indianapolis, Detroit, Milwaukee, Cleveland and Columbus, showing mileage, routes, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

[fol. 191] Ex. 127 (Gaines).—1-sheet statement of rates on turpentine from Savannah, Jacksonville and Brunswick to Chicago, Indianapolis, Detroit, Milwaukee, Cleveland and Columbus, showing mileage, routes, the present, sus-

pended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 128 (Gaines).—3-sheet comparative statement of rates on rosin and turpentine from Savannah, Brunswick and Jacksonville to Cincinnati, Louisville, Evansville and Cairo with rates on fertilizer, burlap bags and bagging, lard compounds, cabbage, potatoes, vegetables, not otherwise specified, showing mileage, routes, average loading, the present, suspended and proposed rates, per ton mile earnings, per car mile revenue and per car mile earnings.

Ex. 129 (Gaines).—1-sheet comparative statement of rates on rosin and turpentine from Savannah, Brunswick and Jacksonville to Cincinnati, and Indianapolis, with rates on canned goods, rice, asphalt, oyster shells and wood pulp showing mileage, routes, average loading, the present, suspended and proposed rates, per ton mile earnings, per car mile earnings and per car revenue.

Ex. 130 (Gaines) 2-sheet statement comparing rates from New Orleans and Mobile to Cincinnati, Louisville, Columbus and Milwaukee on rosin and turpentine with rates on asphalt, barrels, cotton seed hulls, excelsior, paper stock, petroleum and petroleum products, showing mileages, average loading, present rates on commodities and proposed rates on rosin and turpentine, the per car revenue and the per car mile earnings.

Ex. 131 (Gaines).—5-sheet comparative statement of rates on asphalt, petroleum products, oyster shells, bags and waste paper, moss and pulp board with rates on rosin and turpentine from New Orleans and Mobile to Fort Wayne, Grand Rapids, Columbus, Detroit, Akron, Milwaukee, Cedar Rapids, Chicago and Indianapolis, showing mileage, present rates on other commodities and proposed rates on rosin and turpentine, average loading, per car revenue, and per car mile earnings.

George J. Bolender, Traffic Manager of a number of Chemical manufacturing companies located at Kalamazoo, Milwaukee, and Burlington, Ontario, with nearly 20 years of traffic experience with Central Freight Association

[fol. 192] Lines, in the course of his testimony introduced and testified concerning the following exhibits:

Ex. 132 (Bolender).—10-sheet statement showing shipments of rosin received by Western Paper Makers' Chemical Company, Kalamazoo, in March, April and May, 1923, the car number, weight, rate, charges, together with the distance from each point of origin to Kalamazoo and Chicago. It shows a total of 126 cars, weighing approximately 7,000,000 pounds.

Ex. 133 (Bolender).—1-sheet statement comparing earnings on rosin received by Western Paper Makers' Chemical Company, Kalamazoo, in March, April and May, 1923, with earnings under rates proposed in Glenn's Tariff I. C. C. A-424, now suspended. It shows an increase in total charges of $5,006.57, or 18.2 per cent.

Ex. 134 (Bolender).—1-sheet statement comparing rates and earnings on rosin received by Western Paper Makers' Chemical Company, Kalamazoo, in March, April and May, 1923, with earnings under rates in Glenn's tariff I. C. C. A-424, now under suspension, assuming the destination to have been Chicago. It shows an increase in total charges of $591.70, or 2.3 per cent.

[fol. 193] Ex. 135 (Bolender).—1-sheet comparison of earnings on rosin received by Western Paper Makers' Chemical Company, Kalamazoo, in March, April and May, 1923, with earnings on same if destined Chicago; also showing percentage relationship. It shows average earnings per car under proposed rates of $258.98 to Kalamazoo and $210.03 to Chicago.

Ex. 136 (Bolender).—1-sheet comparison of rates and earnings on rosin received by Western Paper Makers' Chemical Company, Kalamazoo, in March, April and May, 1923, with earnings under rates in the proposed tariff, assuming the destination to have been Milwaukee. It shows an increase in earnings per car of $2.13.

Ex. 137 (Bolender).—2-sheet statement of present and proposed rates on rosin from Carbur, Fla., to representative points, Cairo, St. Louis, Chicago and St. Paul, and comparison of ton-mile earnings on same with earnings to Kalamazoo.

Ex. 138 (Bolender).—2-sheet statement showing total charges and earnings per car, per car mile and per ton mile, on business received by Western Paper Makers' Chemical Company at Kalamazoo during March, April and May, 1923, had such business moved to Chicago, on rate of 30 cents per 100 pounds. It shows average per car earnings of $163.22 per car.

Ex. 139 (Bolender).—1-sheet statement showing receipts of rosin by Western Paper Makers' Chemical Company, Kalamazoo, in March, April and May, 1923, and earnings based on rate of 30 cents per 100 pounds. It shows a total of 126 cars received, and average per car earnings of $163.22 per car.

Ex. 140 (Bolender).—6-sheet statement showing the relative situation of Kalamazoo and Chicago under the proposed rates on rosin as applied to the rosin size industry when shipped to points in Central Freight Association territory, including South Bend and Terre Haute, Ind., Erie, Pa., Battle Creek, Detroit, Grand Rapids and Kalamazoo, Mich., and Akron, Cleveland, and Cincinnati, Ohio.

R. L. Tuttle, Traffic Manager, O. & W. Thum Company, Grand Rapids, with 18 years' experience in railroad work, [fol. 194] in the course of his testimony introduced and testified concerning the following exhibits:

Ex. 141 (Tuttle).—1-sheet statement submitted by Berry Bros., Detroit, Mich., showing difference between present and proposed rate on rosin from Gulf ports to Detroit, and increase based on annual average receipt of 15 cars of turpentine, and 50 cars of rosin. The total difference is estimated at $7,200.50.

Ex. 142 (Tuttle).—1-sheet statement of present and proposed rates applying on rosin, carloads, and percentage increase that will be created if proposed rates become effective, from Mobile and Pensacola to Grand Rapids, Chicago, Cleveland, Cincinnati, Detroit and Milwaukee.

Ex. 143 (Tuttle).—1-sheet statement showing distances, present and proposed rates, and ton mile earnings, apply-

ing on rosin, carloads, from Pensacola to Grand Rapids, Chicago, Cleveland, Cincinnati, Detroit and Milwaukee.

Ex. 144 (Tuttle).—1-sheet statement showing distances, present and proposed rates, and ton mile earnings, applying on rosin, carloads, from Savannah to Grand Rapids, Chicago, Cleveland, Cincinnati, Detroit and Milwaukee.

Ex. 145 (Tuttle).—1-sheet statement of class and commodity rates as per Emerson's I. C. C. 78, applying from Gulf ports, Pensacola, New Orleans and Mobile, and comparison of such rates applying to Grand Rapids, with rates to Detroit and Cleveland.

Ex. 146 (Tuttle).—1-sheet statement and comparison by percentage relation of first class rate proposed by carriers [fol. 195] in Southern Class Rate Case, Docket 13494, and proposed rates on rosin, in carloads, from New Orleans, Mobile, and Gulfport, Miss., to Grand Rapids, Chicago, Cleveland, Cincinnati, Detroit and Milwaukee.

Ex. 147 (Tuttle).—1-sheet statement of mileages and average mileages from Cincinnati, Jeffersonville, Ind., Evansville, and Cairo, to Grand Rapids, Chicago, Cleveland, Detroit and Milwaukee.

E. B. Gaines (recalled) introduced and further testified concerning the following exhibits:

Ex. 148 (Gaines).—2-sheet statement showing present and suspended rates on rosin and turpentine from Mobile, Ala., Mobile & Ohio Railroad main line stations north of Mobile and Montgomery extension, to Cincinnati, Louisville, Cairo, St. Louis, Detroit, Chicago, St. Paul and New York, with percentage increase or decrease.

Ex. 149 (Gaines).—1-sheet statement showing present and suspended rates on turpentine, carloads, from Mobile and New Orleans to Cincinnati, Louisville, Cairo, Chicago, Detroit, St. Paul and New York, compared with current rates on other commodities, including asphalt, alcohol, molasses, cotton seed oil, soapstick and petroleum products.

Ex. 150 (Gaines).—1-sheet statement showing present and suspended rates on rosin, carloads, from Mobile and New Orleans to Cincinnati, Louisville, Cairo, Chicago, De-

troit, St. Louis, St. Paul and New York, compared with current rates on other commodities, including asphalt, alcohol, molasses, cottonseed oil, soapstick and petroleum products.

[fol. 196] M. P. Smith, Assistant Traffic Manager Edward Hines Yellow Pine Trustees, was called and in the course of his testimony introduced and testified regarding the following exhibits:

Ex. 151 (Smith).—1-sheet statement showing distance, rates on rosin and turpentine, from various points in Southern and Southeastern States, including Beaumont, Miss., Bogalusa, La., Hattiesburg, Miss., and Kentwood, La., to New Orleans, Mobile and Gulfport.

Ex. 152 (Smith).—1-sheet statement showing rate, mileage, rate per ton per mile, rate per car per mile, on rosin and turpentine, from Southern producing points, including Barth, Hattiesburg and Knoxo, Miss., and Bogalusa and Pine Grove, La., to New Orleans.

Ex. 153 (Smith).—1-sheet statement showing rate, mileage, rate per ton per mile, rate per car per mile, on rosin and turpentine, from Southern producing points, including Camp Baker, De Quincy, Elizabeth and Ludington, La., to New Orleans.

R. J. Doss (recalled) further testified with respect to the establishment of rates on rosin and other naval stores from the producing territory to destination territory involved in this proceeding on a mileage scale and in the course of [fol. 197] his testimony introduced and testified concerning the following exhibits:

Ex. 154 (Doss).—2-page statement of rates on rosin and turpentine, carloads, to Chicago from Gulf ports, including Pensacola, Mobile, New Orleans and Lake Charles and other points of production on the line of the Louisville & Nashville compared with the rates from representative producing points in Louisiana and Texas to Chicago.

Ex. 155 (Doss).—2-page statement comparing the present and proposed rates on rosin and turpentine, carloads,

from Gulf ports, including Pensacola, Mobile and New Orleans, and representative Louisville & Nashville producing points to Cincinnati, Louisville, Evansville and St. Louis, with the rates from representative producing points in the Southwest, including Lake Charles and Bolton, La., to Wichita, Kansas, St. Louis, Kansas City, Mo., and Chicago.

The testimony alone embraces 748 typewritten pages; the exhibits extend the record to nearly 1,200 pages. The reported arguments embrace 123 pages of typewriting and printed briefs were also filed.

On December 5, 1923, the following counsel fully argued the case before Division 4 of the Commission:

Mr. Frank W. Gwathmey, for Southern carriers;

Mr. Charles D. Drayton, for Mississippi Valley carriers;

Mr. H. Ignatius, for Procter & Gamble Company, and 7 other companies, protestants;

Mr. E. B. Gaines, for certain other protestants;

Mr. George J. Bolender, for Western Paper Makers' Chemical Company;

Mr. R. L. Tuttle, for O. & W. Thum Company, (now The Tanglefoot Company).

[fol. 198] STIPULATION RE STATEMENT OF EVIDENCE

By their respective counsel the parties stipulate that the foregoing one hundred and three (103) pages shall constitute a statement showing the scope of the whole evidence in pursuance of the order of the Court entered June 1, 1925.

Harry C. Howard, Solicitor for Appellants. Blackburn Esterline, Assistant to the Solicitor-General. P. J. Farrell, Solicitor for Interstate Commerce Commission.

July 17, 1925.

[fol. 199] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed March 31, 1925

To the Clerk of the Supreme Court:

The appellants hereby state the points upon which they rely to be as follows:

1. That there was no evidence before the Interstate Commerce Commission from which the Interstate Commerce Commission could fix the through rate on rosin from points of origin to the cities of Kalamazoo and Grand Rapids, Michigan, as fixed by said Commission in its findings, a copy of which is attached to the Bill of Complaint.

2. That the through freight rates on rosin from points of origin to Kalamazoo and Grand Rapids, Michigan, are unjustly discriminatory and violative of the "long and short haul" clause, Section 4 of the Interstate Commerce Act,

both of which points are raised in detail in assignments of error, and the appellants designate the parts of the record which they think necessary for the consideration of the Court to be as follows:

[fol. 200] APPELLANTS' DESIGNATION FOR PRINTING

1. Bill of Complaint with Exh. 1 (being 87 I. C. C., 740) and Exh. 2 (being 89 I. C. C., 634) attached.
2. Order of Interstate Commerce Commission (91 I. C. C., 223).
3. Answer of Interstate Commerce Commission.
4. Answer of U. S.
5. Opinion of District Court on Motion for Interlocutory Injunction.
6. Final Decree (Filed Jan. 3, 1925).
7. Petition for Appeal and Order allowing Appeal.
8. Assignments of Error.
9. Bond on Appeal.
10. Petition for Transmission of Original Record on Appeal.
11. Order directing Transmission of Original Record.
12. Acceptance of Service of Citation on Appeal by Atty. Gen. of Michigan.

13. Acceptance of Service of Citation on Appeal by P. J. Farrell, atty. for I. C. C.

14. Acceptance of Service of Citation on Appeal by Sol. Gen. of U. S.

15. Also a narrative form of the evidence given before the Interstate Commerce Commission, which will be furnished and is now being prepared by agreement of counsel.

Western Paper Makers' Chemical Company, Tanglefoot Company, by Harry C. Howard, Their Duly Authorized Attorney.

Dated March 28, 1925.

[fols. 201 & 202] STATE OF MICHIGAN,
County of Kalamazoo, ss:

Harry C. Howard, being duly sworn, says that on the 28th day of March, 1925, he served a copy of the foregoing Designation for Printing upon Blackburn Esterline, Assistant to the Solicitor General, Department of Justice, Washington, D. C., Attorney for the U. S., one of the appellees, and upon P. J. Farrell, Chief Counsel, Interstate Commerce Commission, Washington, D. C., Attorney for the Interstate Commerce Commission, one of the appellees, by placing the same in envelopes addressed to the above counsel at the above named addresses respectively, with postage on each of said envelopes duly prepaid, and depositing each of said envelopes in the Post Office at Kalamazoo, duly addressed as above set forth.

Harry C. Howard.

Subscribed and sworn to before me, a Notary Public in and for Kalamazoo County, Michigan, this 28th day of March, A. D. 1925. Lois M. Field, Notary Public, Kalamazoo County, Michigan. My commission exps. Oct. 28, 1927. (Seal of Lois M. Field, Notary Public, Kalamazoo County, Mich.)

[fol. 203] [File endorsement omitted.]

Endorsed on cover: File No. 30,947. W. Michigan D. C. U. S. Term No. 312. Western Paper Makers' Chemical Company and Tanglefoot Company, appellants, vs. The United States of America and the Interstate Commerce Commission. Filed March 14th, 1925. File No. 30,947.

FILED
MAY 9 1925
WM. R. STANSBURY
Clerk

In The

Supreme Court of the United States

October Term, [redacted] 1925

No. [redacted] 312

WESTERN PAPER MAKERS' CHEMICAL COMPANY,
and the
TANGLEFOOT COMPANY,
Plaintiffs and Appellants,

v.

THE UNITED STATES, and
THE INTERSTATE COMMERCE COMMISSION,
Defendants and Appellees.

APPELLANTS' MOTION FOR DIMINUTION OF RECORD FOR PRINTING AND BRIEF IN SUPPORT THEREOF.

HARRY C. HOWARD,
Attorney for Plaintiffs and Appellants.

Business Address:
Kalamazoo, Michigan.

Mich. Brief & Record Co., 4429 Field Ave., Detroit, Mich.

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In The

Supreme Court of the United States

October Term, 1924.

No. 982.

WESTERN PAPER MAKERS' CHEMICAL COMPANY,
and the
TANGLEFOOT COMPANY,
Plaintiffs and Appellants,

v.

THE UNITED STATES, and
THE INTERSTATE COMMERCE COMMISSION,
Defendants and Appellees.

APPELLANTS' MOTION FOR DIMINUTION OF RECORD FOR PRINTING.

The above named plaintiffs and appellants respectfully show unto the court as follows:

I.

That the above entitled case is an appeal from a final decree made by the district court for the Western District of Michigan, denying plaintiffs' application for an injunc-

tion to restrain an order of the Interstate Commerce Commission fixing a through freight rate on rosin from points of origin to Kalamazoo and Grand Rapids, Michigan. It was the contention of the plaintiffs in the court below that there was no substantial evidence before the Interstate Commerce Commission to sustain the rate of which complaint was made, and in order to sustain that averment in the bill, the plaintiffs, at the hearing in the court below, offered a certified copy of the transcript of the proceedings before the Interstate Commerce Commission, which tended to sustain the plaintiffs' contention that there was no evidence, so far as it related to said through freight rate on rosin. The court below entered a final decree dismissing the bill, and an appeal was duly perfected, and by special order of the court below, the original record was sent to the supreme court and has been duly docketed.

II.

That it will serve no useful purpose to court or counsel to have the certified copy of the voluminous proceedings before the Interstate Commerce Commission printed at length. That in order to properly review the case, all that need be printed is the pleadings, the final decree, and the orders of the Interstate Commerce Commission in relation to this rate. That under date of March 14, 1925, the clerk of the court advised plaintiffs' counsel that he should deposit within ninety days from the date the case was docketed, namely, March 12th, 1925, $7,370.00, covering the following items:

Clerk's costs	$1865.00
Cost of printing record	5530.00
Total	$7395.00
Amount already deposited	25.00
Balance to be deposited	$7370.00

The appellees are the Government and The Interstate Commerce Commission and under the law these costs may not be collected of them if appellants prevail.

III.

After receiving the notice from the clerk, the plaintiffs made a designation for printing, under the rule, designating for printing only the parts of the record necessary to raise the questions sought to be reviewed; a copy of which designation for printing is hereto attached and made a part hereof. That said designation for printing was amended by telegram to the clerk, and a copy of this amended form and a copy of the court's opinion below is attached and made a part hereof. That notice of this amended designation to print was duly served upon counsel upon the opposite side, and thereafter the appellants' attorney received notice by registered mail of the designation to print on the part of the appellees, designating for printing the entire record (for the printing of which the clerk made the estimate of $7,370.00) except Exhibit 17, which had been withdrawn in the proceedings before the Interstate Commerce Commission.

IV.

The proceedings before the Interstate Commerce Commission consist of the evidence of various witnesses taken by question and answer. Many of these witnesses offered in connection with their testimony, exhibits consisting of maps, schedules and other articles which are all of negligible value in determining the questions, so far as they relate to the through freight rate on rosin involved in this controversy. Counsel for the Interstate Commerce Commission expressed a willingness to reduce the testimony taken by question and answer to narrative form, and submitted a narrative form consisting of three hundred sixty-one pages, but expressed a desire to have also printed all the schedules and maps referred to by these various witnesses. Counsel for the appellants is advised by the clerk of the court that this narrative form may not, under the rules of the court, be printed in the regular volume of the printed record, but must be in a supplemental volume. However, if the appellants are required to print the numerous maps and schedules and the three hundred sixty-one pages of the narrative form the questions and answers before the Interstate Commerce Commission, the clerk's fees and the printing fees will amount to several thousand dollars, estimating them on the basis of the clerk's previous figures, it would amount to upwards of five thousand dollars, and it would be impossible for the appellants to expend this amount of money in order to have the case reviewed; and if this printing requirement is to stand, it will be impossible for the appellants to present their case to this court.

Wherefore the appellants pray that an order may be made for a diminution of the record on printing, and that such order shall provide that the printed record shall contain the following: The pleadings; the opinions and decrees of the District Court, together with the orders of the Interstate Commerce Commission concerning said through

freight rate on rosin; with leave to either party in their oral arguments, or in their printed briefs, to set out or refer to any special portion of the certified copy of the proceedings before the Interstate Commerce Commission; that such other and further order may be entered on this motion as to the court may seem just and proper.

Harry C. Howard,
Attorney for Plaintiffs
and Appellants.

Dated April 30, 1925.

State of Michigan,
County of Kalamazoo—ss.

Harry C. Howard, being duly sworn, deposes and says, that he is the attorney for the above named plaintiffs and appellants, and makes this verification for and in their behalf, and is duly authorized so to do. That he has read the foregoing motion by him subscribed and knows the contents therein, and that the same is true of his own knowledge, except matters and things alleged on information and belief, and as to those matters, he believes it to be true.

Lois M. Field,
Notary Public,
(Seal) Kalamazoo County, Mich.
My commission expires Oct. 28, 1927.

IN THE SUPREME COURT OF THE UNITED STATES.

Western Paper Makers' Chemical Company, and
Tanglefoot Company,
Plaintiffs and Appellants,
v.
The United States, and
The Interstate Commerce Commission,
Defendants and Appellees.

No. 982.
October Term, 1924.

DESIGNATION FOR PRINTING PARTS OF RECORD UNDER SUPREME COURT RULE 10.

To the Clerk of the Supreme Court:

The appellants hereby state the points upon which they rely to be as follows:

1. That there was no evidence before the Interstate Commerce Commission from which the Interstate Commerce Commission could fix the through rate on rosin from points of origin to the cities of Kalamazoo and Grand Rapids, Michigan, as fixed by said Commission in its findings, a copy of which is attached to the bill of complaint.

2. That the through freight rates on rosin from points of origin to Kalamazoo and Grand Rapids, Michigan, are unjustly discriminatory and violative of the "long and short haul" clause, Section 4 of the Interstate Commerce Act, both of which points are raised in detail in assignments of error, and the appellants designate the parts of the record which they think necessary for the consideration of the court to be as follows:

APPELLANTS' DESIGNATION FOR PRINTING.

1. Bill of complaint with Exhibit 1 (being 87 I. C. C., 740) and Exhibit 2 (being 89 I. C. C., 634) attached.

2. Order of Interstate Commerce Commission (91 I. C. C., 223).

3. Answer of Interstate Commerce Commission.

4. Answer of U. S.

5. Opinion of District Court on motion for interlocutory injunction.

6. Final decree (filed Jan. 3, 1925).

7. Petition for appeal and order allowing appeal.

8. Assignments of error.

9. Bond on appeal.

10. Petition for transmission of original record on appeal.

11. Order directing transmission of original record.

12. Acceptance of service of citation on appeal by attorney general of Michigan.

13. Acceptance of service of citation on appeal by P. J. Farrell, attorney for I. C. C.

14. Acceptance of service of citation on appeal by Sol. Gen. of U. S.

15. "Examiner Carter: I will rule that I will accept these exhibits at this time for the purpose of showing the historical chronological situation of the specific (stenographer's transcript, 378) and so forth and I will reserve my ruling on the other until later in the hearing. But at this time they are received simply for that purpose and not as justification of any part of the through rate (stenographer's transcript, 379).

Examiner Carter: I might say that my ruling on Mathews' Exhibits 65 and 66 was deferred the other day on the question of justifying the measure of the rate north of the river. I sustain the objection to those exhibits for that purpose and admit them as I stated before for the purpose of showing the historical chronological situation (stenographer's transcript at end of testimony)."

Western Paper Makers'
Chemical Company,
Tanglefoot Company,
By.....
Their duly authorized
attorney.

Dated March 28, 1925.

OPINION DISTRICT COURT.

THE DISTRICT COURT OF THE UNITED STATES—
For the Western District of Michigan, Southern Division.

Filed October 28, 1924,

Chas. L. Fitch, Deputy Clerk.

Western Paper Makers' Chemical Company, and Tanglefoot Company, v. United States of America, and Interstate Commerce Commission.	In Equity. No. 2017.

Before Denison, Circuit Judge, Knappen, Retired Circuit Judge, and Sessions, District Judge.

Per Curiam:

Hearing on motion for interlocutory injunction in a suit to modify an order of the Interstate Commerce Commission, establishing tariffs on certain naval stores so far as they relate to rail rates on rosin from points south of

the Ohio river to the cities of Kalamazoo and Grand Rapids, Michigan. Both plaintiffs are Michigan corporations, the Paper Company doing business at Kalamazoo and the Tanglefoot Company at Grand Rapids, both being in central territory. Each plaintiff receives annually by freight large quantities of rosin shipped to it at its place of business above stated from points of origin in certain southern states. This hearing was had before three judges under the Act of October 22, 1913, C. 32 (38 St., 220; U. S. Comp. St., 1916, Sec. 998).

It appears from the Commission's report, without challenge, that practically the entire production of naval stores in the United States is in Florida, Georgia, Louisiana, Mississippi, Texas and the Carolinas, the first three states named being the heaviest producers, and relatively as to each other in the order above given; the largest production is at the interior points, from which shipments are made by rail to South Atlantic and Gulf ports, where they are concentrated and crated and shipped by water or rail to destination. Savannah and Jacksonville are the principal South Atlantic ports, and Pensacola, Mobile and Gulfport the principal gulf ports, between which and the South Atlantic parts of competition has become very keen.(1)

The Commission's order here attacked was made as the result of a suspension proceeding ordered by the Commission because of protests by producers and dealers in and shippers of naval stores, including plaintiffs, against a proposed comprehensive revision by carriers, in both the Southeastern and Mississippi Valley territory, of the rates on naval stores from all points of production. By the then prevailing tariffs, the rates from all South Atlantic ports to a given destination were the same, regardless of specific origin, some through rates being published to certain points

1. Broadly speaking, the territory east of the line of the Louisville & Nashville Railroad from Decatur, Alabama to Pensacola, Florida, is called Southeastern territory, and west of that line, Mississippi Valley.

in certain territory, made up of the local rate to the Ohio river plus a "specific," published by the line north of the river, A "specific" as stated by the Commission, is "said to be neither a local rate nor a division of a through rate, but in the nature of a proportional" (87 I. C. C., 742). From some producing points in Southeastern territory the rates to destination points were affected by certain locals. Rates from the Gulf ports had always been lower than from interior producing points in the Mississippi Valley. Because of competition between South Atlantic and Gulf ports, there was some relation between rates from all the ports, and at the time of the proposed revision the rates from all the ports to Cincinnati were the same. The rates from New Orleans to Chicago had been influenced by the single-line rates of the Illinois Central, and were lower than to other points in Central territory.

By these tariffs the rate on rosin to Cincinnati was 27 cents per 100 lbs.; to Chicago, 39 cents from South Atlantic and 30 cents from Gulf ports; to Detroit, 39.5 cents from South Atlantic and 33 cents from Gulf; to Milwaukee 44.5 cents from South Atlantic and 33 cents from Gulf; to Kalamazoo 39 cents from South Atlantic and 34.5 from Gulf; to Grand Rapids 44.5 from South Atlantic and 34.5 from Gulf. Chicago's rate from the Gulf ports was thereby 9 cents, Milwaukee's 11.5 cents, Detroit's 6.5 cents, Kalamazoo's 4.5 cents and Grand Rapids 10 cents lower than from South Atlantic ports.

By the proposed revision it was sought to equalize rates from all producing territory to Cincinnati, by increasing rates from the ports, the rates from the greater part of the territory being blanketed. To other river crossings the proposed rates were either the same as, of differentials over or under, the rates to Cincinnati. For example, the Cincinnati rate, while still the same from all ports, both Gulf and South Atlantic, was to be increased from 27 cents to 33 cents. To points beyond the Ohio river new and higher specifics, furnished by lines operating beyond

the river, were to be added. Chicago, Milwaukee and other related points, however, were given by certain carriers(2) lower rates than proposed for Ohio River combinations, on the ground that single-line rates of the Illinois Central from New Orleans required the Southeastern lines to establish lower rates to Chicago in order to meet the Illinois Central competition. To illustrate: The rate to Chicago from South Atlantic ports was proposed to be increased to 41 cents from the then existing rate of 39 cents, and from the Gulf ports to 37 cents from the then existing rate of 30 cents. The rate to Milwaukee from Gulf ports increased from 33 cents to 40 cents while from South Atlantic ports it decreased from 44.5 cents to 44 cents; the rates to Kalamazoo and Detroit were increased to 47.5 cents and to Grand Rapids 48 cents from both South Atlantic and Gulf ports.

Upon full hearing, to which both plaintiffs were parties, the Commission found the proposed new rates not justified, ordered a cancellation of the suspended schedules and found the following to be just and reasonable rates for the future from South Atlantic and Gulf ports respective(3): Cincinnati, 33 cents, both routes; Chicago, 40 cents and 37 cents; Milwaukee, 41 cents and 38 cents; Kalamazoo, 40 cents and 39 cents; Grand Rapids, 41 cents and 40 cents; Detroit, 40 cents by both routes (87 I. C. C., 754). The rate to Milwaukee was later made 42 cents and 39 cents, thus mak-

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2. These carriers were Chicago & Alton; Chicago & Eastern Illinois; Chicago, Burlington & Quincy; Chicago, Indianapolis & Louisville; Illinois Central; Louisville & Nashville and Southern. Rates by other carriers were the full combination of local rates to Cincinnati and specific beyond (87 I. C. C., 746).

3. The first rate state is South Atlantic. We find it unnecessary to set out the rates to other points than given in this opinion or to cover rates on turpentine, which, although involved in the Commission's hearing, are not in issue here.

ing the South Atlantic rate to Kalamazoo the same as to Chicago and Detroit, and the rate to Grand Rapids one cent less than to Milwaukee; and from the Gulf the rate to Milwaukee 2 cents higher than to Chicago, and to Grand Rapids one cent higher than to Milwaukee (89 I. C. C., 637; 91 I. C. C., 226). It is these rates to Kalamazoo and Grand Rapids, so found by the Commission to be just and reasonable, which the bill before us seeks to set aside.

Plaintiffs' main contention, broadly stated, is that there was no evidence before the Commission supporting the rates to these two cities as so finally fixed.

Recognizing the fundamental rule that an order of the Commission fixing rates is invalid unless supported by evidence (*Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S., 88, 91; New England Divisions Case, 261 U. S., 184, 203, 204 and cases there cited*), this court cannot weigh the testimony as to the reasonableness of the rates or the wisdom of establishing them. Those subjects are finally committed to the judgment and discretion of the Commission, when acting within its power. *Proctor & Gamble v. United States, 225 U. S., 282, 297, 298; New England Divisions Case, 246 U. S., 457, 481; Seaboard Air Line Ry. Co. v. United States, 254 U. S., 57, 62.*

We do not understand plaintiffs to deny that the subject-matter was within the Commission's jurisdiction and power. Its findings are made by the law *prima facie* true, and the Supreme Court has ascribed to them "the strength due to the judgments of a tribunal appointed by law and informed by experience." *Illinois Central R. R. Co. v. Interstate Commerce Commission, 206 U. S., 441, 454; Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry., 218 U. S., 88, 110; Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S., 541, 546.*

A finding of the fact of reasonableness of a rate can thus not be pronounced arbitrary or unreasonable if there was competent evidence in its support. In the view we

take of the case, we find it unnecessary to decide whether the rule that the burden of proof is upon the carrier to show the reasonableness of its proposed increase in rates (*Interstate Commerce Act, Par. 7, Sec. 15*) applies to rates prescribed by the Commission after a hearing upon the proposed increases. See Par. 2, Sec. 15-a of the Act 4. The entire record before the Commission is in evidence here.

Plaintiffs concede that on the hearing before the Commission the lines south of the Cincinnati gateway offered evidence tending to show the reasonableness of that portion of the through rate from the points of origin to the river. The testimony so introduced related to both South Atlantic and Gulf port rates. The Cincinnati rate therein concerned is the same that the Commission found reasonable, viz: 33 cents. The substantial criticism thus necessarily is that there was no testimony sustaining the specifics north of the river or of the rate as a through rate. But while we are cited to no direct testimony of the reasonableness of any one through rate or specific, there was testimony tending to show that the suspended rates from Ohio River crossings north, on the basis of rates south of the river as factors, were reasonable (see 87 I. C. C., p. 747). And we think that for this and other reasons there cannot be said to be an absence of competent evidence thereof. It affirmatively appears that the specifics with which we are concerned north of the river are substantially less than the "specifics" or proportionals in actual use for a substantial period prior to the proposed revision which was the subject of the suspension proceeding. For example: Kalamazoo's old South Atlantic rate of 39 cents was 12 cents above the then river rate of 29 cents. By the 40 cent southeastern rate to Kalamazoo which the Commission adopted the specific is but 7 cents above the new river

4. The Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

rate. By the old Gulf schedules Kalamazoo's rate of 34.5 cents was 4.5 cents above Chicago and 7.5 cents above Cincinnati, while her new rate of 39 cents is but 2 cents above Chicago and 6 cents above Cincinnati. Grand Rapids' old South Atlantic rate of 44.5 cents was 17.5 cents above the River rate, while her new rate is but 8 cents above the River rate. Her old Gulf rate of 34.5 cents was 4.5 cents above Chicago and 7.5 cents above Cincinnati, while her new Gulf rate is but 3 cents above Chicago and 7 cents above Cincinnati. The increases of Kalamazoo's rates by both routes and of Grand Rapids' Gulf rate were thus not only due entirely to the increases of rates to the River and (apparently) to Chicago especially, but represented an actual decrease of specific. As has already appeared, Grand Rapids South Atlantic Rate is 3.5 less than her old rate, while Kalamazoo's South Atlantic rate is but one cent higher than her old.

Again, prior to the publication of the suspended tariffs rates from the southeast to various destination territories were published on the "sectional plan," the factors to and from the river crossings being named in the tariffs. For example: The tariff from Jacksonville to Kalamazoo was shown as 27 cents to Cincinnati and 12 cents beyond. From the Gulf ports to Kalamazoo the rate was 34.5 cents. As the rate to Cincinnati was given as 27 cents, there was left 7.5 cents for the haul from Cincinnati to Kalamazoo. Each of these old specifics was thus substantially larger than the specific under the rates here under attack. We think it clear that the long-continued existence of established rates made up of a key rate to the River (or to Chicago), and which came into the instant case through an effort by the carriers to establish higher rates, was at least some evidence of the reasonableness of the new specific contained in the rates adopted by the Commission. We see no merit in the suggestion that the testimony of the reasonableness of the "specific" was incompetent. Upon the issue of *reasonableness* the propriety of each factor was both competent and material, notwithstanding in the proposed new

tariff the rate was published as a through rate. What we have said about the specifics or proportionals north of the river applies equally to both South Atlantic and Gulf rates, so far as through rates were based thereon. Further, the Commission had before it not only comparative distances from representative points of shipment in both South Atlantic and Gulf territory to destinations including Kalamazoo, Grand Rapids, and such comparable points as Cincinnati, Chicago, Milwaukee and Detroit, but tables showing ton-mile earnings and car-mile earnings from representative points of shipment, in both Gulf and South Atlantic territory, under both the old and the suspended tariffs, by the shortest workable routes to each of the destinations given immediately above.(5) We think the rates here assailed must be sustained unless unjustly discriminatory as against Kalamazoo and Grand Rapids, or both, or unless violative of the "long and short haul" clause (section 4) of the Act. By plaintiffs' brief in this court the charge of discrimination is, at best, faintly presented. The bill alleges generally that rates from the Gulf ports to Kalamazoo are higher than from the same point of origin to Chicago, although the latter is the longer haul; that the rates from Mississippi Valley territory to Grand Rapids are higher than the rates from the same points of origin to Milwaukee, "which is a longer haul"; and, more specifically, that the rate to Cincinnati was described by the carriers at the suspension hearing to be the key-rate to the territory beyond; that the distance from Cincinnati to Kalamazoo is less than to either Chicago or Milwaukee, and from Cincinnati to Grand Rapids less than to Milwaukee; that transportation conditions to Kalamazoo and Grand Rapids were not shown to be less favorable than to Chicago and Milwaukee, and thus that Kalamazoo is directly intermediate to Chicago and Milwaukee, and Grand Rapids directly intermediate to Milwaukee by way of various worked and workable routes. It will be observed

5. See Commission's report in suit by plaintiffs against Director General, 91 I. C. C., 224-225.

that no charge of discrimination in South Atlantic rates is made.(6) Indeed, that rate to Kalamazoo is the same as to Chicago and Detroit, and two cents less than to Milwaukee, and to Grand Rapids is one cent less than to Milwaukee. From the Gulf territory, however, Kalamazoo's rate is the same as Milwaukee's, viz: one cent less than Detroit's, but two cents higher than Chicago's; and Grand Rapids' rate is one cent higher than Milwaukee's. But the direct and logical route from Cincinnati to Kalamazoo and Grand Rapids does not pass through either Chicago, Milwaukee or Detroit. Nor does the direct and logical route from Chicago to Milwaukee pass through either Kalamazoo or Grand Rapids. Moreover, by one of the comparative earning schedules before referred to, the distance from Mobile (7) to the points involved here were: to Cincinnati, 750 miles, Chicago (which is nearly 300 miles from Cincinnati), 858 miles; Milwaukee, 943 miles, Kalamazoo 964 miles; Grand Rapids 1011 miles, and Detroit 1021 miles. The Commission found that "Because of the absence of routing instructions Kalamazoo and Grand Rapids are technically intermediate to Chicago, Detroit and Milwaukee, by possible routes, although the record indicates that

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6. Unless possibly as between Grand Rapids and Chicago. But apart from the influence of the lower Gulf rates to Chicago, it is a mistake to say that the distance from Cincinnati to Grand Rapids is less than to Chicago. We are cited to no reference, and we know of none supporting the statement in plaintiffs' brief, that the Commission finds that "there is no justification for the through rate to Grand Rapids which is higher than the rate to Chicago," if intended to refer to the new rate established by the Commission. Its findings are to the contrary. (87 I. C. C., at page 754; 91 I. C. C., at page 227).

7. Mobile would seem to be a fairly representative Gulf port. The Commission says that "distances are stated by the parties to have been computed by the shortest workable routes." 91 I. C. C., 225.

actual movement over such routes would be unusual. (91 I. C. C., 225).

The Commission further found that the Illinois Central controls the rates from New Orleans to Chicago, and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made (91 I. C. C., 226). We think that neither of these findings nor the basing of the Mississippi Valley rate to Milwaukee upon the Chicago rate can be pronounced arbitrary or beyond the Commission's authority. It seems clear that by neither the old nor the later suspended Gulf port tariffs was the rate to Cincinnati regarded as the key-rate for Chicago and Milwaukee. The charge of discrimination therefore cannot be sustained. *Seaboard Air Line Ry. v. United States, 254 U. S., 57-62.*(8) We see no basis for the contention that the rates *established* by the Commission violate the Fourth Section of the Act. The Commission found that the suspended rates did have that effect, and in canceling those rates and ordering new rates denied applications for relief from Fourth Section departures, with leave later to apply for relief where ground should exist therefor (87 I. C. C., 756); and in modifying the rate from Milwaukee as before referred to, by reason of a charge of discrimination as against Kalamazoo and Grand Rapids, permitted—without requiring—the carriers to keep open routes from points in the eastern

8. By the old established Gulf Port tariffs rates to Cincinnati, Chicago and Milwaukee were, in the order above given 27 cents, 30 cents and 33 cents; by the suspended rates they were respectively 33 cents, 37 cents and 40 cents, while Kalamazoo's rate was 34.5 and 47.5. The rates from South Atlantic ports to the Louisville and Cairo river crossings, adopted by the Commission, were the same as to Cincinnati, viz: 33 cents; while the Gulf rates were in the case of Louisville one cent, and in the case of Cairo five cents, less than to Cincinnati, apparently due to the influence of the Illinois Central rates from New Orleans. (87 I. C. C., 754).

portion of the New Orleans group through Grand Rapids to Milwaukee by reducing the Grand Rapids rates from such points (89 I. C. C., 637); and in its later order dismissing plaintiffs' complaint, which asked injunction against the rate adjustment (91 I. C. C., 226-227), the Commission said not only that "The new adjustment will result generally in the removal of the existing Fourth Section departures in the origin territory," but "It is understood that the routing under the new adjustment will be so restricted as to remove the technical Fourth Section departures with respect to destination points hereinbefore referred to," which were Chicago, Milwaukee, Kalamazoo and Grand Rapids.

It results that the application for injunction must be denied.

At the hearing counsel for both parties orally expressed willingness that the final decree be made upon the record already submitted and the arguments made upon the motion. Should counsel still be so minded, they may file stipulation to that effect.

A. C. Denison,
Circuit Judge.
Loyal E. Knappen,
Circuit Judge.
C. W. Sessions,
District Judge.

In The

Supreme Court of the United States

October Term, 1924.

No. 982.

WESTERN PAPER MAKERS' CHEMICAL COMPANY,
and the
TANGLEFOOT COMPANY,
Plaintiffs and Appellants,

v.

THE UNITED STATES, and
THE INTERSTATE COMMERCE COMMISSION,
Defendants and Appellees.

BRIEF IN SUPPORT OF MOTION.

STATEMENT.

(Opinion below not yet published.)

This motion is for the diminution of the record to be printed on an appeal from a decree of the District Court for the Western District of Michigan dismissing appellants' bill of complaint praying for a decree enjoining the going

into effect of an order of the Interstate Commerce Commission putting into effect a through freight rate on rosin from points of origin in the South to Kalamazoo and Grand Rapids, Michigan.

On the hearing below a certified copy of the proceedings before the Interstate Commerce Commission was offered in evidence. The bill involved two theories:

1. That there was no substantial evidence before the Interstate Commerce Commission on which to base the order.

2. That the rate allowed a discrimination against Kalamazoo and Grand Rapids and was violative of the long and short haul clause of the Interstate Commerce Act.

Under the Act of Congress, Section 995 of the U. S. Compiled Statutes (Act, Oct. 22, 1913, C, 32), Section 999 U. S. Comp. St., 1916 (Jud. Code, Sec. 210) which contemplates certifying these original records on appeal, the entire record below has been duly certified and has been filed in the office of the clerk of the Supreme Court, and the clerk has advised appellants' counsel that it is necessary to deposit the sum of $7,370.00 to cover the clerk's fees and printing, within ninety days from the time the case was docketed, which was No. 982 of the October term. It was the contemplation of Congress that on these appeals an order sending up the original record contemplated a saving of expense and to permit an inexpensive and speedy hearing.

ARGUMENT.

The appellees in this case are the Government and the Interstate Commerce Commission, and under the law, if these costs are deposited and the appellants should prevail, it is impossible for them to collect these costs from the Government and the Interstate Commerce Commission. It may have been with this in mind that Congress authorized the returning of the original record on such appeals. The amount involved in this case is not large enough to warrant the appellants depositing this amount of money, and if they are required so to do, it will amount to denying their right to appeal.

After receiving this notice from the clerk, appellants designated, under the rule for printing, the part of the record which would seem to be sufficient to raise the questions necessary for consideration. Whereupon, counsel for the appellees designated the printing of the balance of the record, so at this writing, it is necessary to print the entire record, although the counsel for the appellees have submitted an agreed narrative form of the questions and answers given by the witnesses on the oral hearing before the Interstate Commerce Commission. Of this narrative form there are three hundred sixty-one (361) pages. We are perfectly willing to pay for the printing of that much of the record, and in addition, all the items which the appellants have designated for printing, as shown in the motion. This, in itself, will make a very bulky record, but we are willing to go to this expense in order that

the appeal may be heard. However, we urged below, and we are willing to stand on that here in this court, that the opinions of the Interstate Commerce Commission giving effect to the order of which complaint is made, show on their face that there was no substantial evidence before the Commission. We submitted a certified copy of the proceedings before the Commission on the hearing below so that counsel for the appellees could point to any special part of the record which contained any substantial evidence, and the District Court, in its opinion, a copy of which is on file with the clerk of this court (opinion below not yet published), said in substance that their attention had been directed to no special evidence, although they did point out that from the opinion of the Interstate Commerce Commission, itself, that the court deemed that they had some evidence upon which to base the order.

The proceedings of the Interstate Commerce Commission were merly an exhibit in the lower court and there is no reason why that exhibit should be printed at length for use in this court. The printing of it would only make a huge, unwieldly record which would be of no assistance at all to this court in deciding the appeal. Contained in this certified copy of the proceedings before the Interstate Commerce Commission were the questions and answers given by the witnesses. The witnesses introducing as part of their testimony prolix schedules and maps, few if any of them, relating to the through freight rate on rosin; having to do in many instances with rates on other commodities.

If before deciding this motion, a reference is made to the record which has been filed in the clerk's office, it will be seen that it is altogether unreasonable to print it. So far as the appellants are concerned, they are willing to pledge themselves to confine their argument on appeal to the facts set out in the opinions of the Interstate Commerce Commission and the District Court of the Western District of Michigan, and are entirely agreeable to the ap-

pellees referring to any portion of the record before the Interstate Commerce Commission which they desire to refer to, or print in their briefs.

Modern practice does not contemplate a prolix record—only sufficient to raise the questions involved in the appeal. If there is any special part of the record which counsel for the appellees believes should be printed, we would be willing to pay the expense of printing such portion, but we say that it is inequitable to insist on the printing of the entire record. All of the matters that were before the Interstate Commerce Commission itself are on file in the office of the clerk of the Supreme Court, and at any time are available both to the court and counsel. Ordinarily, the rule seems to be that where counsel cannot agree upon the record that the entire record should be printed and the matter be left to the court to determine as a matter of costs—the penalty for insisting upon an unreasonable amount of printing being that the costs may be taxed against the party so insisting, but in the instant case this rule cannot be invoked because here the Government and the Interstate Commerce Commission are the defendants and appellees, and if later it be determined that the appellees have designated for printing, a record of unreasonable length, the court would be powerless to give the appellants any relief because costs of printing may not be adjudged against the appellees.

If the motion is granted, provision may be made in the order for the appellees to refer to the plaintiffs' exhibit, the certified copy of the proceedings before the Interstate Commerce Commission, either on the oral argument, or in their briefs, and no harm may be done them. The bulky maps and schedules may be exhibited to the court if the appellees deem them of any consequence in determining the issue on appeal. In the court below the District Court contented itself with a reference to the pages of the printed opinion of the Interstate Commerce Commission, and from all that shows in that opinion, did not in any way review

the certified copy of the proceedings before the Commission. We have caused a copy of that opinion to be printed with this motion for the convenience of the court.

CONCLUSION.

In conclusion we respectfully ask that the court make an order allowing the diminution of this record, and that the appellants be only required to print those items designated in appellants' designation to print, a copy of which is annexed to the motion.

Respectfully submitted,

HARRY C. HOWARD,
Attorney for Plaintiffs and Appellants.

Dated May 1, 1925.

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In The

Supreme Court of the United States

October Term, 1925.

No. 312.

WESTERN PAPER MAKERS' CHEMICAL COMPANY, and
TANGLEFOOT COMPANY,

Appellants,

v.

THE UNITED STATES OF AMERICA, and
THE INTERSTATE COMMERCE COMMISSION,

Appellees.

Appeal From the District Court of the United States for the Western District of Michigan.

Filed March 14, 1925.

(30,947)

BRIEF IN BEHALF OF PLAINTIFFS.

HARRY C. HOWARD,
Attorney for Plaintiffs.

Mich. Brief & Record Co., 4429 Field Ave., Detroit, Mich.

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In The

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No. 312.

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Appellants,

v.

THE UNITED STATES OF AMERICA, and
THE INTERSTATE COMMERCE COMMISSION,

Appellees.

Appeal From the District Court of the United States for the Western District of Michigan.

Filed March 14, 1925.

(30,947)

BRIEF IN BEHALF OF PLAINTIFFS.

STATEMENT.

This is an appeal from a final decree entered in the District Court for the Western District of Michigan dis-

missing a bill praying for an injunction to restrain the going into effect of an order of the Interstate Commerce Commission as affecting the through rate on rosin from south Atlantic and Gulf ports to Kalamazoo and Grand Rapids. *(Western Paper Makers' Chemical Co. v. U. S. et al., 7 Fed 2nd, 164.)*

The practice on rate making under the Interstate Commerce Act is as follows: The carriers publish a rate. If any shipper makes an objection to the rate the issue is joined on such objection and the rate is put upon what is known as the Investigation and Suspension Docket. An examiner takes the proof and the burden is then placed upon the carrier to justify the rate in issue. The proofs are heard before an examiner appointed by the commission and on the record so made the commission writes an opinion or order.

In the instant case the carriers published a rate. Among others the plaintiffs objected to the rate and an issue was made upon that objection and the proofs were taken. On a consideration of the record made in that case the commission found that the carriers had failed

(a) To justify the through rate on rosin to Kalamazoo and Grand Rapids,

(b) That the proposed rates were discriminatory against Kalamazoo and Grand Rapids when compared with Chicago and Milwaukee respectively,

(c) That the proposed rates were violative of the fourth section of the Interstate Commerce Act (the long and short haul clause),

and on its own motion the commission made an order permitting another rate, and thereupon the carriers published a rate in accordance with the suggestion of the commission and it is the rate so permitted by the commission of which complaint is made upon the three grounds:

1. That there was no evidence before the commission to justify its order.

2. That the order permitted a rate which was discriminatory against Kalamazoo and Grand Rapids and in favor of Chicago and Milwaukee.

3. That the rate permitted was violative of Section IV of the Interstate Commerce Act.

The court below (*7 Fed. 2nd, 164*) found against the plaintiffs on each of these contentions (R., 53) although we contend erroneously as more fully set out herein.

The hearing below was before three judges under Act Oct. 22, 1913, C., 32 (38 St., 220 U. S. Comp. St., 1916, Sec. 998) and the final decree dismissing plaintiff's bill was made January 3, 1925 (R., 52).

Originally the jurisdiction of rate questions was with the Commerce Court. When that court was dispensed with the jurisdiction was given to the District Courts and provision was made as stated above for the matters to be heard before three judges.

The Supreme Court declined to disturb on appeal an order granting a temporary injunction suspending an order of the Interstate Commerce Commission.

U. S. v. B. & O., 225; U. S. 306; 56 L. Ed., 1100.

The Supreme Court has declared that while the findings of the Interstate Commerce Commission of what are reasonable rates are administrative matters peculiarly within the powers of the commission and are not reviewed by the courts of the law, nevertheless, the validity of such findings must depend upon the presence of facts upon which they are based. The Supreme Court said:

> "A finding without evidence is beyond the power of the commission. An order based thereon is contrary to law and must, in the language of the statute, 'be set aside by a court of competent jurisdiction.' *36 Stat., 551 Pennsylvania R. R. Co. v. International Coal Co., 230 U. S. 184; 33 Sup. Ct., 893; 57 L. Ed., 1446; Ann. Cas., 1915-A, 315; Interstate Commerce Commission v. Louisville R. R. Co., 227 U. S. 88, 91; 33 Sup. Ct., 185; 57 L. Ed., 431; Interstate Commerce Commission v. Delaware, etc., Ry. Co., 220 U. S., 235, 251; 31 Sup. Ct., 392; 55 L. Ed., 448; Florida East Coast Ry. Co. v. United States, 234 U. S., 167, 185; 34 Sup. Ct., 867; 58 L. Ed., 267.*"
>
> *Chestnut Ridge Ry. Co. v. U. S., 248 Fed., 802.*

The rates involved in this controversy are on what are known as "naval stores." That term has its derivation from colonial times (R., 69), and related to "instructions for such things as are to be sent from Virginia." Pitch and tar being the chief products and those being used chiefly for the maintenance of sailing vessels, pitch and tar became known as "naval stores," and the name has endured (R., 70).

This case involves a through rate for rosin from points of origin south of the Ohio river to Kalamazoo and Grand Rapids. It must be borne in mind that a

through rate is something less than the sum total of the local or specific rates. It is a concession in the amount of the charge in consideration of the freight's moving all the way through from the origin in the south to the destination in the north. It is a wholesale rate for a long haul. It is a concession on the part of the carriers for the sake of having the business on the long haul. It is something similar to the concession that the hotel keeper makes to the guest who stays in the house week in and week out. The transient guest who stays only a day or two pays at a higher rate than the rate at which the guest who stays month after month pays. A through rate should always be less than the specific rates. It is a generally accepted principle of rate making that through rates should be less than the sum of the intermediate rates.

Chattanooga Packet Co. v. I. C. R. R., 32 I. C. C., 384.

ARGUMENT.

Prior to the proposed rates there has been an inequality in the old rate due to the fact that from interior points the rates were higher than from the ports or concentration points. The Western Paper Makers Chemical Company maintains plants at Jacksonville, Savannah, and Pensacola for refining rosin (R., 112). Both of the plaintiffs objected to the proposed rates and this proceeding finally resulted in the commission, on its own motion, indicating a different rate than that investigated, and these rates so permitted did result in reductions to Kalamazoo and Grand Rapids from many interior points, as well as increases from South Atlantic and Gulf ports. The Western Paper Makers Chemical Company has no rosin refineries at the interior points. It concentrates its shipments at their refining plants located at Jacksonville, Savannah, and Pensacola, and hence, their interest is chiefly in the rates from these points. This proceeding resulted in a general readjustment of rates in which there were both increases and reductions. Under such circumstances the carriers cannot point to the reductions as justification of the increases. The increase must be justified, if at all, entirely independent of the reductions.

The justification of the increased rates must go not only to the amount of the increase proposed, but also to the new rate after having given effect to the increase. In other words, in an investigation and suspension proceeding the new increased rate is in issue in its entirety. This is illustrated by the following:

The old rates from Pensacola are:

	Cinn.	Chicago	Kal.	Grand Rapids
	$ .27	$ .30	$ .345	$ .345
Increase in rate permitted by Com.	.06	.07	.045	.055
Totals through rate from Pensacola finally permitted	$ .33	$ .37	$. 39	$ .40

While Kalamazoo and Grand Rapids both got less increase than either Cincinnati or Chicago, they nevertheless have an incorrect rate because the old through rate to Kalamazoo and Grand Rapids was wrong, and the through rate in an investigation and suspension proceeding in its entirety is in issue, and not the component parts thereof, as the District Court seemed to contemplate (R., 58).

Thus certain questions are raised for consideration:

1. Was there any evidence justifying the increase in the suspended through rates? The answer is that the commission itself found there was not (R., 26).

2. Was there evidence justifying the increase as permitted by the commission, or an increase in the old rates, or of the new through rates as increased?

3. Can a through rate be justified by attempted justification of its component parts?

4. Did the rates established by the railroads under the permissive order of the commission result in undue discrimination between Kalamazoo and Grand Rapids, as in favor of Chicago and Milwaukee?

5. Can the commission permit the cancellation of rates and routes through intermediate points to prevent such intermediate points from maintaining its rights under the long and short haul clause of the 4th section of the Interstate Commerce Act?

When it was apparent that the permitted rates worked the injuries suggested in the paragraph above numbered 5, it became necessary for some means to be devised to escape, if possible, a violation of that 4th section. The method adopted is suggested in the opinion of the court below:

> "It is understood that the routing under the new adjustment will be so restricted as to remove the technical fourth section departures with respect to destination points hereinbefore referred to,"

which were Chicago, Milwaukee, Kalamazoo and Grand Rapids (R., 6). In order to make this point clear, consider by the way of illustration the former rates because the figures themselves do not matter. The old rates from Pensacola were 30c to Chicago and 34½c to Kalamazoo. Now, if that adjustment resulted in the violation of the 4th section which the commission said it did (R., 18), certainly there were numerous ways in which to remove the discrimination. The rate to

Chicago could be increased to 34½c, which would be one way; or the rate to Kalamaoo could be reduced to 30c, which is another way, but we insist that the commission could not permit the continuance of the 34½c to Kalamazoo and the 30c rate to Chicago by a mere rerouting of the traffic so that Kalamazoo becomes farther away than Chicago, which is geographically a physical impossibility whatever the commission may say about it, or whatever the lower court may have said about it. The absurdity of this is illustrated when we point to the fact that the carriers said that the key rate was Cincinnati (R., 91), with which the commission agreed (R., 15). Therefore, we say that the mileage to Kalamazoo and to Chicago would be figured through that key point, but to escape this the District Court said that by figuring the mileage to Chicago over the L. & N. through Evansville (not the key point taken by the carriers and the commission) and then over the C. & E. I. into Chicago, Chicago then becomes nearer Pensacola than Kalamazoo, provided, Kalamazoo's mileage is figured through Cincinnati. We insist that if for the purpose of removing the 4th section departure you abandon the key rate of the carriers and take some other route, then Kalamazoo and Grand Rapids should have the benefit of that same route. Rosin destined for Kalamazoo and Grand Rapids can move over the L. & N. and the C. & E. I. to Terre Haute, Indiana, and from there over the Pennsylvania to South Bend, Indiana, and hence over various routes into Kalamazoo and Grand Rapids, and when so figured, the mileage is substantially less than to Chicago figured over the identical route.

One of the reasons why the carriers and the commission used Cincinnati as the key point was to give

the initial carrier the longest haul (Cincinnati being somewhat farther than Evansville from Pensacola), (R., 96).

Under Section 15 of the act the commission suspended for investigation the proposed new rates. On the hearing before the commission the carriers introduced certain testimony, and after that investigation the commission decided adversely to the contention of the carriers and ordered the schedules canceled. In that opinion the commission, on its own motion, suggests certain rates as being just and reasonable, and thereafter the carriers published the rates suggested by the commission, and it is this order permitting the carriers to file these last mentioned rates that the bill of complaint attacks.

It was concerning this order that the court wrote its opinion (R., 53) and made its final decree (R., 52). The errors assigned are as follows (R., 62):

> "1. The court erred in denying said interlocutory injunction.
>
> 2. The court erred in considering evidence which had been excluded by the Interstate Commerce Commission in a proceeding before it on the investigation and suspension of the through rail rate on rosin from the gulf ports to Kalamazoo and Grand Rapids, Michigan, and in considering the testimony thus excluded by the commission as testimony upon which to base the said through rate on rosin as established by the Interstate Commerce Commission, which (fol. 73) rates from the South Atlantic and Gulf ports are as follows:

To	From Jacksonville	From New Orleans
Cincinnati	$ .33	$ .33
Chicago	.40	.37

Milwaukee	.41	.38
Kalamazoo	.40	.39
Grand Rapids	.41	.40
Detroit	.40	.40

3. The court erred in holding that the rates established by said Interstate Commerce Commission were not discriminatory as against Kalamazoo, Michigan.

4. The court erred in holding that the rates established by said Interstate Commerce Commission were not discriminatory as against Grand Rapids, Michigan.

5. The court erred in holding that the rates so fixed by the Interstate Commerce Commission were not in violation of the 'long and short haul' clause (Section 4), of the Interstate Commerce Act so far as concerns the through rates on rosin from the Gulf ports to Kalamazoo, Michigan.

6. The court erred in holding that the rates so fixed by the Interstate Commerce Commission were not in violation of the 'long and short haul' clause (Section 4), of the Interstate Commerce Act so far as concerns the through rate on rosin from the Gulf ports to Grand Rapids, Michigan.

7. The court erred in not holding that it was a shorter haul from the Gulf ports to the city of Kalamazoo, Michigan, than to the city of Chicago, Illinois, for the reason that the city of Kalamazoo is in fact a shorter distance by rail over the usual route.

8. The court erred in not holding that the city of Grand Rapids was a shorter distance from the Gulf ports than the city of Milwaukee, Wisconsin, when figured by the usual (fol. 74) route.

9. The court erred in considering the mileage from the Gulf ports to the city of Chicago by way of the Louisville & Nashville Railroad and Evansville, Indiana, and comparing that mileage with the mileage to the city of Kalamazoo, Michigan, figuring the latter mileage through the city of Cincinnati, Ohio, whereas if the mileage had

been figured to Kalamazoo over the Louisville & Nashville Railroad by way of Evansville, Indiana, the actual mileage to Kalamazoo would have been less than the mileage to Chicago figured over the same route.

10. The court erred in finding any evidence before the Interstate Commerce Commission sustaining the through rates as fixed by said Interstate Commerce Commission."

The plaintiffs are interested only in the through rate on rosin as distinguished from the other commodities that were involved in the order of the commission. The Western Paper Chemical Company at Kalamazoo, Michigan, is a large consumer of rosin in making rosin size. It uses about seven and one-half million pounds each quarter (R., 115). The other plaintiff uses about fifty cars of rosin per year in the manufacture of sticky fly paper (R., 151). The rosin size is used largely by the paper mills in what is known as the Kalamazoo district.

Jacksonville, Florida, is the largest market in concentration point for naval stores. Producers from the interior points ship their products chiefly in small quantities to Jacksonville, where they are graded and concentrated (R., 21). The same practice of concentrating and grading prevails at other South Atlantic and Gulf ports. Pensacola is the largest shipping point on the Gulf territory (R., 21).

Before the tariff in question was published there were joint through rates on rosin from the Gulf ports to certain points north of the Ohio river, viz:

To Chicago 30c
To Kalamazoo 34½c

To Milwaukee 33c
To Grand Rapids 34½c

(R., 27). There were also rates in effect from the South Atlantic ports and from points intermediate from the South Atlantic ports, and also intermediate to the Gulf ports to points north of the Ohio river, which rates were published in what is known and called sectional plan tariffs, which provided certain rates to be used to the Ohio river crossings and certain specific rates to be added to the rates to the river crossings, the sum of which made up the through rate to the ultimate destination; the through rate to be based on the cheapest combination so made. The rate arrived at in this manner from the South Atlantic ports at that time were:

To Chicago 39c
To Kalamazoo 39c
To Milwaukee 44½c
To Grand Rapids 44½c

(R., 30). These rates which we have set out are referred to in the finding of the commission as the "present rates" to distinguish them from what they in their opinion called the "suspended rate."

1.

NO EVIDENCE.

(1). Was There Any Evidence Justifying the Increase in the Suspended Through Rates?

(2). Was There Evidence Justifying the Increase as Permitted by the Commission, or an Increase in the Old Rates, or of the New Through Rates as Increased?

Section 15 of the Interstate Commerce Act lays down the rule as to how the published rates when under investigation shall be established, and it is there enacted:

> "The burden of proof to show that the increased rate when changed is just and reasonable is on the carriers"
>
> *Paragraph 5, Sec. 15, Interstate Commerce Act.*

Under the Interstate Commerce Act the burden of proving the reasonableness of a rate under investigation is placed on the carriers. Certain of the carriers south of the Ohio river offered some evidence, not as to the through rates on rosin to destination, but as to the rate to points on the Ohio river such as Cincinnati as a "key point," and other Ohio river crossings. Of this testimony the commission said:

> "Very little evidence was introduced in support of the through rates, the southeastern and Mississippi valley carriers apparently proceeding on the theory that they were required to justify only the rates to the river crossings and that the burden of supporting the proportions of the rates beyond the crossings rested upon the central lines.

> All of the rates in the proposed revision are published as through rates and the burden of proof is upon the respondents to justify them as such" (R., 18).

While the commission said there was "very little evidence," the record shows that there was none at all justifying this through rate. This matter was argued at length in the District Court and the court said:

> "But while we are cited to no direct testimony of the reasonableness of any one through rate or specific, there was testimony tending to show that the suspended rates south of the river as factors, were reasonable" (R., 57).

After the carriers had offered their proofs in relation to the rates, the examiner finally said:

> "Examiner Carter: I would like to find somebody who is going to attempt to justify the rates to Kalamazoo and Grand Rapids. Yesterday the witness passed it on to the Central Freight Association lines, and the Central Freight Association lines have stated their position. Now, if there is any particular justification further than what you have already put in, I think we ought to have it. * * *
>
> Examiner Carter: Yes. Perhaps I did not make my question as clear as it should have been. I should have said, 'No justification has been offered of the alleged discrimination against those two points" (Kalamazoo ond Grand Rapids, R., 105).

The representative of the Central Freight Association lines, when the matter was passed on to him, said:

> "I claim no particular knowledge of conditions at the South Atlantic ports. Anything I have said is not in justification of the joint through rates

> as published from these ports to points north of the Ohio river. We are attempting only to justify our specifics. We are offering no justification of the joint through rates from the Mississippi valley" (this statement includes the whole producing territory, R., 103).

We will quote from the testimony of all the witnesses called by the carriers on this investigation to show that none of them undertook to justify the through rates:

Witness Doss for the carriers, said:

> "I had not intended filing a statement showing all specifics to and from all Ohio river crossings to all points of destination as they were furnished to us by the northern lines. The C. F. A. lines are here. I assume they will probably do so. I do not know, however. I would much prefer that you get it from the lines who are represented here who fixed these proportions. In filing this exhibit I was merely trying to show just how we arrive at these through rates, the suspended rates" (R., 78).

Witness Cook said:

> "I am not undertaking to justify that increase to Grand Rapids of more than double the increase to Chicago. We made the rates over Ohio river; the arbitraries furnished us by the C. F. A. lines. I am not undertaking to justify the proposed through rates published in this tariff" (R., 97).

Witness Drescher said:

> "I am not trying to justify the rate to Kalamazoo; I am justifying the rate by our relationship. I attempted to justify it by our relationship of our rates to the rates of the Illi-

> nois Central. If the Illinois Central cannot justify it, we cannot justify it" (R., 100).

Witness Mathews said:

> "Anything I have said is not in justification of the joint through rates as published from these ports to points north of the Ohio river. We are attempting only to justify our specifics" (R., 103).

These are the only witnesses of the carriers who testified upon the subject of the through rates. There were two other witnesses called, but they testified in regard to matters not in controversy.

3.

Can a Through Rate Be Justified by Attempted Justification of Its Component Parts?

The references here are to all the testimony that might possibly relate to a through rate and shows clearly that there was no testimony of any kind offered, nor was there any before the commission of any kind, to justify the rates suggested in the opinion of the commission. On this record the Interstate Commerce Commission itself said:

> "Upon this record we find that the proposed increased rates have not been justified" (R., 28).

The error into which the court below fell was in considering the specifics instead of the through rate, which brings us to the question of the rules of the Interstate Commerce Commission as to what should be considered in determining the reasonableness of a joint through rate, and the commission has said that

a joint through rate must be considered in its entirety, as in construction of a combination patent composed of old elements.

> *Wichita Board of Commerce v. The Director General, 81 I. C. C., 423.*

The commission has stated over and again that the separate factors in a through rate are not the things to consider, but the rate of the charge as a whole is the matter to which the test of reasonableness must be applied.

> *Peoples Fuel & Supply Co. v. G. F. W. Railway Co., 30 I. C. C., 657.*

The finding of the court below that there was some evidence upon which the commission might have based its conclusion was predicated entirely upon the evidence as to the specific rates (i. e., the elements and not on the entirety).

In this very case the commission itself has defined a specific:

> "A specific is said to be neither a local rate nor a division of a through rate, but in the nature of a proportional rate published to apply on this particular class of traffic" (R., 12).

The commission indicates throughout its opinion time and again that the reasonableness of the proposed rates was not sustained, and then on its own motion and without any evidence (other than that evidence which it held insufficient to sustain the proposed rates then under investigation), concludes that some other rate would be reasonable and just, and suggests a rate which the carriers adopted and published and which

the District Court sustained. The commission had no right to do this unless there was some evidence in the record which would justify the rates which the commission suggested, or any increase of the then existing rates. On another occasion the Interstate Commerce Commission undertook to base its findings upon annual reports of some of the carriers which were among its files, although not offered as evidence in the particular proceedings in which they made the findings, and the Supreme Court has said, after discussing the matter at length:

> "The matter improperly entered and treated as evidence may have been an important factor in the conclusion of the commission. The order must therefore be ordered void."
>
> *U. S. v. Abilene & So. Ry. Co., 68 L. Ed. (No. 16 Advance Sheets, June 16), 594 (Orient case).*

In the instant case the commission found that there was no justification at all for the through rate. The District Court in passing upon the question of whether there was any evidence before the commission that would justify its order, said that its attention had been called to no "direct testimony of the reasonableness of any one through rate of specific," and then continued to state that there was testimony tending to show that the suspended rates from the Ohio river crossings on the basis of all rates south of the river as factors, were reasonable, and then the court continued:

> "and we think for this and other reasons there cannot be said to be an absence of competent evidence thereof" (R., 57).

The court then takes up further the question of the

specific, and takes apart the through rate and concludes that the specifics north of the river used in making up the through rate published on the permissive order of the commission is less than the specific formerly in use, and therefore, it is probably reasonable. There is a difference between explaining the mechanics of a rate, which the court was doing, and justifying the reasonableness of a rate. The propriety of a through rate must be sustained by evidence of a probative nature showing satisfactory reasons for the increase and that a higher rate is reasonable.

Echols & Co. v. A. & W. Ry., 34 I. C. C., 644.

It is not sufficient to show that the proposed increased rates are made in conformance with previous practice, or in accordance with a basis of long standing. None of these considerations are, of themselves, sufficient justification. *Class and Commodity Rates from Illinois and Other States, 75 I. C. C., 59. Silica from Southern Illinois, 73 I. C. C., 406. Butter, Eggs, and Dressed Poultry from Texas, 73 I. C. C., 466.* All of these cases cited from the commission's own rulings are investigation and suspension cases under Section 15 of the act like the one in the instant case.

On the hearing the attention of one of the witnesses for the carriers was called to the discrimination against Kalamazoo and Grand Rapids, and the witness testified as follows:

> "Our increase from the ports to Cincinnati is 6 cents, so that our total increase, due to the increase to the river and increase in the specific beyond, is 8½ cents. As to why we are increasing the rate to 13 cents—the necessity of

> a greater increase at Kalamazoo than at the other points: I don't recall; I don't know just what that is. * * *
>
> The increase on rosin to Chicago from the Gulf ports is 7 cents, and to Grand Rapids it is proposed to increase the rate 13½c. I am not undertaking to justify that increase to Grand Rapids of more than double the increase to Chicago. We made the rates over Ohio river; the arbitraries furnished us by the C. F. A. lines. I am not undertaking to justify the proposed through rates published in this tariff" (R., 97).

If the course approved by the District Court of considering specifics to provide a through rate were followed and the carriers are consistent, the increase on Kalamazoo in the proposed rate and the rate under investigation should have been not to exceed 8½c higher, yet they proposed to increase it to 13c, and so far as the rate to Grand Rapids is concerned, they did not tell what the specific was. They contented themselves by showing an increase of 13½c and which they said they could not justify.

In determining through rates you are dealing with an entirely new thing—as an entirety. A through rate is not the sum of several specific rates from place to place, but it is something entirely different—a wholesale price—and a through rate should always be less than the sum of the specifics. That is to encourage through traffic—long hauls. The commission recognized this principle in this very case, saying:

> "We are of the opinion, however, that the combination basis is not justified and that there is no controlling reason why through rates lower than those resulting from the combination on the

Ohio river gateways should not be established" (R., 26).

The commission, skilled in traffic matters, said positively that the through rates should be less than the sum of the specifics and that opinion when so expressed calls for a less rate than was suggested at the time the commission expressed that opinion. The rate then in force at the time of the investigation of the proposed rate to Kalamazoo, Michigan, from South Atlantic ports was 39c (R., 30). The rate made under the permissive order of the commission and approved by the District Court was 40c (R., 55).

4.

Did the Rates Established by the Railroads, Under the Permissive Order of the Commission, Result in Undue Discrimination Between Kalamazoo and Grand Rapids and in Favor of Chicago and Milwaukee?

The commission said:

> "The central lines testified that there is no justification for a lower rate to Chicago than to Kalamazoo from the southeast or from Pensacola and admitted that Kalamazoo is discriminated against in favor of Chicago by both the present and proposed rates" (R., 23).

The rates as approved, are as follows:

Chicago	40c and 37c
Kalamazoo	40c and 39c
Milwaukee	41c and 38c
Grand Rapids	41c and 40c
Detroit	40c both routes

(R., 55).

The court below refers to the fact that the rate to Chicago is due to the fact that the Illinois Central owns its own rails from New Orleans to Chicago. The court says on this subject:

> "The Illinois Central controls the rates from New Orleans to Chicago, and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made. We think that neither these findings nor the basing of the Mississippi valley rate to Milwaukee upon the Chicago rate can be pronounced arbitrary or beyond the commission's authority" (R., 60).

Both the commission and the court are in error in this regard because justly and equitably if Milwaukee, which is not on the line of the Illinois Central, is to have the benefit of the rate made by the Illinois Central owning its own lines from New Orleans to Chicago, then by the same token, both Kalamazoo and Grand Rapids ought to have a like benefit. Milwaukee is not on the line of the Illinois Central, neither is Kalamazoo nor Grand Rapids.

In reference to the rates to Chicago, the commission said:

> "There is no evidence to show that the rates of the Illinois Central to Chicago are on less than a reasonable basis" (R., 24).

It naturally follows from this that if the rate to Chicago, which is a distance of something over nine hundred miles, is not on less than a reasonable basis, that a like rate should prevail for every other place that is within a similar distance. For example: Kalamazoo is nearer Pensacola than Chicago by 37 miles, and Grand Rapids is not over 50 miles from Kalama-

zoo. Or in other words, Grand Rapids is only 12 miles farther from Pensacola than Chicago, yet the discrimination in the rates is out of all proportion to such distances. Many times the commission has had to deal with the reasonableness of rates covering a considerable distance and where there has been more than one carrier, and it has laid down the rule that when distances of over 500 miles are involved, the fact that the service is by two lines instead of one is largely negligible so far as it applies to the reasonableness of the rate.

> *Calivada Fertilizer Co. v. Southern Pacific, 73 I. C. C., 496.*

In numerous cases the commission has prescribed rates based on distance and in such cases it almost invariably provides that for distances of 500 miles and more, the rate should be the same whether for two lines or joint line applications. Some comparatively recent decisions are the following:

> *Memphis Southwestern Investigation, 77 I. C. C., 473.*
>
> *Board of Railroad Commissioners of the State of South Dakota v. C. & N. W. Ry. et al., 77 I. C. C., 451.*
>
> *Armour & Co. v. C. of Ga. Ry. et al., 81 I. C. C. 33.*
>
> *Corporation Commission of Oklahoma v. Arkansas R. R. et al., 80 I. C. C., 607.*
>
> *Inland Crystal Salt Co. v. B. A. & P. Ry. et al., 78 I. C. C., 659.*

In this connection the commission said:

5.

Can the Commission Permit the Cancellation of Rates and Routes Through Intermediate Points To Prevent Such Intermediate Points From Maintaining Its Right Under the Long and Short Haul Clause of the 4th Section?

The 4th Section of the Interstate Commerce Act makes unlawful the charging of a higher rate for a shorter than for a longer distance, the shorter being included in the longer. If there is any reason why that provision should be violated, the carrier is required to apply to the Interstate Commerce Commission for permission to put in force a rate which is in violation of that 4th section. It is only on the application of the carrier in that regard that the commission may act. In the rate approved by the District Court there is a direct violation of this section, and no carrier has applied to the commission for permission to violate the section. In fact, in this very proceeding the carriers declined to plead for any such indulgence (R., 23).

> "The central lines testified that there is no justification for a lower rate to Chicago than to Kalamazoo from the southeast or from Pensacola and admitted that Kalamazoo is discriminated against in favor of Chicago by both the present and proposed rates" (R., 23).

The rate approved by the court to Chicago was without any justification by any of the carriers in the proceeding before the commission, and in fact, there is no evidence of any kind to justify it, and of that rate the commission, itself, said:

> "There is no evidence to show that the rates

of the Illinois Central to Chicago are on less than a reasonable basis" (R., 24).

Also:

> "None of the respondents offered any justification of the fourth section departures at Grand Rapids and agreed that such departures as may exist should be removed" (R., 25).

The court in its opinion said:

> "It is understood that the routing under the new adjustment will be so restricted as to remove the technical fourth section departures with respect to destination points hereinbefore referred to,"

which were Chicago, Milwaukee, Kalamazoo and Grand Rapids (R., 60-61).

This reference to routing simply means this:

That the carriers are to be permitted to drop from their published tariffs the previously existing rate and route to Chicago which applied through Kalamazoo and to Milwaukee which applied through Grand Rapids, for the purpose of escaping the violation of Section 4 of the Interstate Commerce Act. This the carriers could not lawfully do. On this very subject, the commission said:

> "The cancellation of the commodity rates has the effect of leaving higher rates the only ones applicable. It is therefore an instance of increased rates in which the burden is upon respondents to prove the reasonableness of the increased rates. This they have not undertaken to do, except by showing that traffic did not move under the lower rates."

Sandstone-Missouri River Building Stone Rates, 1913, 28 I. C. C. Rep., 268-270, et seq.

The rate to Cincinnati was described by the carriers at the suspension hearing as being the "key rate" to the territory beyond and to the other Ohio river crossings as well (R., 15-16).

As the carriers use Cincinnati as the "key rate" to the territory beyond, it is unfair to deprive Kalamazoo and Grand Rapids of the right to figure their most advantageous mileage through Cincinnati, and to accord to Chicago the right to figure its mileage over the L. & N. through Evansville, and the C. & E. I. into Chicago. But if the District Court were right in considering that Chicago mileage might be figured through Evansville (not over the Illinois Central single line) then Kalamazoo should have the same privilege, and if the mileage to Kalamazoo is figured over the L. & N. through Evansville, and then via Terre Haute and South Bend, Indiana, Kalamazoo's mileage is substantially less than the mileage to Chicago, and the mileage to Grand Rapids when so figured would be correspondingly reduced. In other words, if the carriers consider Cincinnati to be the gateway (the key), then all the rates should figure through Cincinnati. If Cincinnati is the key to figure all the rates, then all the traffic should be counted through Cincinnati. The Illinois Central rails do not go through Cincinnati and hence it is entirely fallacious to excuse this unlawful and unreasonable rate on account of the fact that the Illinois Central owns and operates its own rails from New Orleans to Chicago.

CONCLUSION.

While the court below said that there was no direct testimony as to the reasonableness of the through rate, yet to sustain the commission the court took the very testimony which the commission itself had expressly excluded. The examiner who had the matter in charge said:

> "I will rule that I will accept these exhibits at this time for the purpose of showing the historical, chronological situation of the specifics, and so forth, and I will reserve my ruling on the others until later in the hearing. But at this time they are received simply for that purpose and not as a justification for the through rate" (R., 141).
>
> "Also (October 5, 1923): 'I might say that my ruling on Matthew's Exhibits 85 and 86 was deferred the other day on the question of justifying the measure of the rate north of the river. I sustain the objection to those exhibits for that purpose, and admit them, as I stated before, for the purpose of showing the historical, chronological situation" (R., 141).

The court below, in order to find some evidence upon which to base the reasonableness of the through rate, considered this evidence which the commission, itself had excluded, and the effect of the decree below is to put back into the record this evidence which the commission declined to consider on the question of the reasonableness of the through rate. On the investigation, the southern lines in offering evidence of the rate to Cincinnati, did not offer that evidence as a justification of the through rate to Kalamazoo and Grand Rapids, but offered it as evidence of reasonableness of

the rate to Cincinnati, itself. Had it been offered as justification of the through rate it would have been excluded by the examiner the same as he excluded the evidence of the reasonableness of the specific north of the river as justification of the through rate. A long continued existence of an established rate might be evidence of the reasonableness of that particular rate, but it can never be evidence of the reasonableness of any other rate, for if it were otherwise, the carrier need only publish a rate and if questioned, sustain the burden of proof which the statute places upon the carrier by citing the old rate.

When a railroad company, advancing a rate which has been for some time in force, the fact of its continuance is in the very nature of things an admission against the railroad company, which tends to show the unreasonableness of the advance, rather than an evidenciary fact to be considered by the commission as a justification of the old rate.

Central Yellow Pine Association v. Ill. Central Railroad, 10 I. C. C., 505.

The court below seemed to be of the impression (R., 58) that the long continued existence of established rates made up of the key rate to the river and specific was at least some justification of the new specific. The court seemed to entertain the view that because the new specific from the river to Kalamazoo and Grand Rapids was less than the old specific that it was some evidence that the rate was reasonable. The unfortunate part about that is that it does not work out that way. This is illustrated in the proceeding before the commission. In the testimony of Mr. Cook, general freight agent of one of the carriers:

"Our increase from the ports to Cincinnati is

> 6 cents, so that our total increase, due to the increase to the river and increase in the specific beyond, is 8½ cents. As to why we are increasing the rate to 13 cents—the necessity of a greater increase at Kalamazoo than at the other points: I don't recall; I don't know just what that is. * * *
>
> The increase on rosin to Chicago from Gulf ports is 7 cents, and to Grand Rapids it is proposed to increase the rate to 13½ cents. I am not undertaking to justify that increase to Grand Rapids of more than double the increase to Chicago" (R., 97).

The rate which the commission permitted on its own motion in the instant case was a higher rate than the carriers had published in their proposed new rate. The evidence which the court below found a justification of the reasonableness of the rate was admitted in the case for chronological purposes only, and consequently, it could not be considered for any other purpose, and the commission would have no more right to base its order on that than it would on anything else that might be in its files, such as annual reports or carriers dealing with rates even over the same route.

> *U. S. v. Abilene & Co. Ry. Co., 68 L. Ed., 594 (Orient case).*

However, if the reasonableness of the specifics may be considered, then the record shows that the rates or the specifics to the river are the same from all the producing points whether they were interior or Gulf ports, and the record showed that to make the through rate the carriers north of the river gave the same specifics to both Chicago and Kalamazoo, so the conclusion must be inevitable that both Chicago and Kalamazoo should have exactly the same rate.

On the question of discrimination, the commission said:

> "The southeastern and Mississippi valley lines offered no justification of such departures as may exist in the proposed adjustment, and the central carriers stated that there is no justification for such departures at points of destination in their territory" (R., 18).

All the rates in the proposed revision are published as through rates and the burden of proof is upon the respondents (carriers) to justify them as such (R., 18).

> "The central lines testified that there is no justification for a lower rate to Chicago than to Kalamazoo from the southeast or from Pensacola and admitted that Kalamazoo is discriminated against in favor of Chicago by both the present and proposed rates. They stated that the same specifics to both points for the haul north of the Ohio river were furnished to the southern lines and that they had no part in the adjustment which published lower rates to Chicago. Kalamazoo consumes greater quantities of rosin than Chicago and must compete in the sale of rosin size with producers at that point and also at points in eastern territory" (R., 23).

What was said here by the commission was not only true of the present and proposed rates, but it was equally true of the rates finally permitted on the commission's own motion. Such being the case, it seemed entirely clear that the rate permitted by the commission in its order violated the clause in the Interstate Commerce Act which related to discrimination in the rate to be charged in transportation of goods to the different cities. The commission in its opinion found a violation of the long and short haul clause of the

4th section of the act so far as Grand Rapids was concerned, saying:

> "None of the respondents offered any justification of the fourth section departures at Grand Rapids and agreed that such departures as may exist should be removed" (R., 25).

The rates permitted on the commission's own motion were likewise a departure from the fourth section, and there was no justification or evidence in the record of any kind to justify the commission's order in permitting this discrimination against Grand Rapids. So far as Kalamazoo was concerned, the commission expressly found:

> "The central lines testified that there is no justification for a lower rate to Chicago than to Kalamazoo from the southeast or from Pensacola and admitted that Kalamazoo is discriminated against in favor of Chicago by both the present and proposed rates" (R., 23).

The commission, in its order which the court declined to enjoin, permitted on its own motion another rate, but the rate which they allowed did not remove the fourth section violation because such rate permitted by the commission is a higher rate for a shorter haul. When the rate is computed as to mileage through the same gateway; that is to say, if the through rate on rosin is figured to Chicago through Cincinnati (which carriers testified was the "key rate," and gateway through which the products naturally pass), and the through rate to Kalamazoo is figured through the same gateway, then Kalamazoo is 37 miles shorter than to Chicago. In the opinion of the court it is pointed out that Chicago is a shorter haul than Kalamazoo, but that is only when you figure the Kalamazoo mileage

through Cincinnati gateway and figure the Chicago mileage over the L. & N. through Evansville and the C. & E. I. into Chicago. Our reply to that is that it is the natural way that traffic travels rather than the possible way, that determines the fourth section violation. However, if to sustain the through rate to Chicago, the mileage is to be figured through the route traveled by the L. & N. and Evansville, then the through rate to Kalamazoo should also be figured through the same Evansville, Terre Haute and South Bend, Indiana, then mileage to Kalamazoo when so figured is substantially less than to Chicago. It is only fair to compute the distance by the crossings of the Ohio.

While we insist that there is no evidence to sustain the rates permitted by the commission on its own motion, even if we err in that regard, surely the rates so permitted are violative of both Sections 3 and 4 of the act. They discriminate against both Grand Rapids and Kalamazoo and they charge both Grand Rapids and Kalamazoo, which are shorter distances in miles, a greater rate than they charge Milwaukee and Chicago respectively. Hence, we urge that the court erred in the denial of the preliminary injunction and we respectfully ask that the decision below be reversed.

Dated March 2, 1926.

Respectfully submitted,

HARRY C. HOWARD,
Attorney for Plaintiffs.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 312

WESTERN PAPER MAKERS' CHEMICAL COMPANY AND Tanglefoot Company, appellants

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE Commission, appellees

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN

BRIEF FOR THE UNITED STATES

OPINION

Circuit Judges Denison and Knappen and District Judge Sessions denied application for interlocutory injunction and dismissed the bill of complaint (R. 52) with a full opinion (R. 53), *Western Paper Makers' Chemical Co.* v. *United States*, 7 Fed. Rep. (2d) 164.

The Commission filed three reports, *Naval Stores from Southern Producing Points to Various Destinations*, 87 I. C. C. 740 (R. 9); 89 I. C. C. 634 (R. 35). *Western Paper Makers' Chemical Co.* v. *Director General, etc.*, 91 I. C. C. 223 (R. 41).

JURISDICTION

The suit was commenced and the appeal was taken under Commerce Court Act, ch. 309, 36 Stat. 539, and Urgent Deficiencies Act, ch. 32, 38 Stat. 219, 220. The latter provides "A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree," * * *. On January 3, 1925, the final decree was entered (R. 52) and the appeal was allowed on February 19, 1925 (R. 62).

QUESTION

In making adjustments of the rates on naval stores from all of that territory lying south of Tennessee and east of the Mississippi River to destinations north of the Ohio River, did the Commission have sufficient evidence upon which to fix the South Atlantic rate to Kalamazoo the same as to Chicago and Detroit, and the rate to Grand Rapids 1 cent less than to Milwaukee; and from the Gulf the rate to Milwaukee 2 cents higher than to Chicago, and to Grand Rapids 1 cent higher than to Milwaukee? (R. 55.)

STATEMENT

In all of that territory lying south of Tennessee and east of the Mississippi River to and including both of the Carolinas, naval stores [1] (rosin and

[1] The earliest mention of turpentine and rosin seems to exist in a manuscript dated 1610, preserved in the Public Record Office, London, and entitled "Instructions for Such Things As Are To Be Sent From Virginia." Bulletin No. 229, July 28, 1915, U. S. D. of A. The bulletin shows

turpentine) are produced and shipped therefrom into all of that territory lying west of the Buffalo-Pittsburgh line on the east and to and even beyond the Mississippi River on the west (R. 10).

That southern territory is divided by the line of the Louisville & Nashville from Decatur, Ala., to Pensacola, Fla. (R. 10). The territory lying to the east of that line is known as Southeastern territory and the territory lying west is known as Mississippi Valley territory (R. 10).

By tariffs to become effective between September 1 and October 1, 1923, the carriers operating in these territories proposed "a comprehensive revision of the rates on naval stores from all points of production" (R. 10) (87 I. C. C. 740).

Attached to the report of the Commission are certain appendices which portray the rates then in force and those which were suspended (87 I. C. C. 757). Certain rosin rates in force as against those suspended from (1) South Atlantic and Gulf ports, (2) interior producing points to typical destinations, and (3) South Atlantic and Gulf ports to Ohio and Mississippi River crossings are set forth in the footnote.[2]

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that pitch and tar were the chief products of the industry up to the middle of the eighteenth century and that their extensive use in the construction and maintenance of sailing vessels caused them to be called "naval stores," a term now applied to the turpentine and rosin industry. Witness produces excerpt of that part of the bulletin dealing with the history of the naval stores industry in the United States. The principal production of naval stores is at present in Florida and Georgia (50–54.) The largest production is in Florida (R. 69–70).

[2] See note, p. 4.

[1] NOTE:

	In force	Suspended
	Cents	*Cents*
(1) From South Atlantic ports:		
To Chicago	39	41
To Kalamazoo	39	47.5
To Milwaukee	44.5	44
To Grand Rapids	44.5	48
To Cleveland	39.5	47.5
To Detroit	39.5	47.5
To Buffalo	41	51
From Gulf ports:		
To Chicago	30	37
To Kalamazoo	34.5	47.5
To Milwaukee	33	40
To Grand Rapids	34.5	48
To Detroit	33	47.5
To Cleveland	33	47.5
To Buffalo	41	51
(2) From Valdosta, Ga.:		
To Kalamazoo	47.5	47.5
To Milwaukee	56.5	44
To Grand Rapids	53	48
To Detroit	48	47.5
To Cleveland	48	47.5
To Buffalo	49.5	51
To Chicago	47	41
From Fayetteville, N. C.:		
To Kalamazoo	48	47.5
To Milwaukee	45	49
To Grand Rapids	53.5	48
To Detroit	41	47.5
To Cleveland	38.5	47.5
To Buffalo	42	51
To Chicago	42	41
(3) From Dothan, Ala.:		
To Kalamazoo	48.5	47.5
To Milwaukee	57.5	40
To Grand Rapids	51.5	48
To Detroit	49	47.5
To Cleveland	49	47.5
To Buffalo	63	51
To Chicago	49	37
From Hattiesburg, Miss.:		
To Kalamazoo	43	47.5
To Grand Rapids	46.5	48
(4) From South Atlantic ports:		
To Louisville, Ky	27	33
To Cairo, Ill	27	33
To Memphis, Tenn	24.5	33
To St. Louis, Mo	36	37
To Cincinnati, Ohio	27	33
From Gulf ports:		
To Louisville, Ky	24.5	30
To Cairo, Ill	21.5	30
To Memphis, Tenn	24.5	27
To St. Louis, Mo	25.5	30
To Cincinnati, Ohio	27	33

After full hearings in which all of the parties, including these appellants, offered evidence and made arguments, the Commission denied the application of the carriers. Its formal order to that end is dated March 5, 1924, and is attached to its main report of the same date (R. 33). The carriers were compelled to cancel their schedules.

After thus reviewing the "comprehensive revision of the rates on naval stores from all points of production," and denying the applications of the carriers, and directing the cancellation of the schedules, the Commission found "that just and reasonable rates for the future from Jacksonville and points in Atlanta subterritory, and from New Orleans, and points in Montgomery subterritory and Mississippi Valley territory, to representative destinations" shall be as follows (R. 27) (87 I. C. C. 754):

To—	From Jacksonville		From New Orleans	
	Rosin	Turpentine	Rosin	Turpentine
	Cents	*Cents*	*Cents*	*Cents*
Cincinnati	33	52	33	52
Louisville	33	52	32	51
Cairo	33	52	28	44
St. Louis	37	58	31	49
Memphis	31	49	25	40
Nashville	30	47	30	47
Chicago	40	63	37	58
Kalamazoo	40	63	39	62
Milwaukee	41	64	38	60
Grand Rapids	41	64	40	63
Cleveland	39	62	40	63
Detroit	40	63	40	63
Columbus	37	58	37	58
Indianapolis	37	58	36	57
Buffalo	42	66	43	67

No formal order was then entered by the Commission directing that such rates shall be published and filed. The Commission announced that the respondents would be expected to establish such rates on or before May 20, 1924, and if they fail to do so, the Commission would then enter an appropriate order (R. 29) (87 I. C. C. 756).

The carriers, who had filed the schedules for the comprehensive revision, and shippers who had protested thereagainst, all filed petitions for modification of the findings and for vacation of the order and for reconsideration and reargument (R. 36). These petitions were denied with the exception of the petition for modification in some respects of the findings.

The Commission again examined the record and set forth at length, as it did in the original report, what the record showed with respect to the rates. It is difficult to conceive of a more thorough examination and consideration of the record.

The rates found reasonable from Jacksonville and New Orleans, representative points in the respective origin groups, to destinations considered in the Supplemental Report are as follows [3] (91 I. C. C. 226):

[3] It will be noted that under this adjustment the rate from the Southeast to Kalamazoo will be the same as to Chicago and Detroit, and the rate to Grand Rapids will be 1 cent less than to Milwaukee. From the Gulf ports and Mississippi territory the rate to Kalamazoo will be 2 cents higher than to Chicago, and the rate to Grand Rapids will be 1 cent higher than to Milwaukee (R. 46).

To—	From Jacksonville	From New Orleans
	Cents	*Cents*
Chicago	40	37
Kalamazoo	40	39
Milwaukee	42	39
Detroit	40	40
Grand Rapids	41	40

It is observable, therefore, that appellants defeated applications for very substantial increases in the rates. And because the Commission, *in adjusting the relation of the rates*, fixed Kalamazoo at 2 cents higher than to Chicago and Grand Rapids at 1 cent higher than to Milwaukee, from Gulf ports and Mississippi Valley territory, this bill of complaint was filed (R. 55).

Tanglefoot Company uses but 50 carloads of rosin per year (R. 43). Western Paper Makers, of Kalamazoo, are found to use 500 carloads per year. The Commission found that "complainant and the manufacturer at Milwaukee now have a division of a territory of distribution and are no longer competitors" (R. 42) (91 I. C. C. 224).

ARGUMENT

SUMMARY

I. The evidence shows that the Illinois Central Railroad by its single line route controls the rates from New Orleans to Chicago and Milwaukee, and that other carriers serving New Orleans and Gulf ports meet the rates so made (R. 47). The rates on rosin from southern producing points to Kalamazoo have always been higher than the rates to Chicago and Detroit and almost uniformly

they are and have been higher than the rates to Milwaukee (R. 113). The ~~rates~~ cars from Southeastern territory to Grand Rapids and Kalamazoo, via Ohio River crossings, are always handled by two or more lines. The operating and other conditions, therefore, as between Chicago–Milwaukee and Grand Rapids–Kalamazoo are dissimilar from points of origin.

II. The evidence shows that the rates on other articles and commodities from the territories to the destinations in question are made on the same basis as the rates on naval stores.

III. The sole question whether there was substantial evidence to support the order was adjudged against the appellants by the learned Judges of the District Court (R. 53–61). In determining that question the court will not weigh the evidence of the reasonableness of the rates or pass on the wisdom of the action of the Commission in establishing them, or substitute its judgment for the findings and conclusions of the Commission. As soon as it appears there was substantial evidence the decree will be affirmed. *New England Divisions Case*, 261 U. S. 184, 203, 204; *United States* v. *New River Co.*, 265 U. S. 533, 540, 542; *Chicago, Indianapolis & Louisville Railway* v. *United States*, 000 U. S. 000, March 1, 1926.

IV. The decree should be affirmed.

I

THE SINGLE LINE ROUTE OF THE ILLINOIS CENTRAL FROM NEW ORLEANS TO CHICAGO CONTROLS THE RATES TO CHICAGO AND MILWAUKEE. THE ~~RATES~~ cars FROM SOUTHEASTERN TERRITORY TO GRAND RAPIDS AND KALAMAZOO, VIA OHIO RIVER CROSSINGS, ARE ALWAYS HANDLED BY TWO OR MORE LINES

There was evidence to show that from New Orleans to Kalamazoo the rate should be 2 cents higher than to Chicago and that Grand Rapids should take 1 cent more than Milwaukee (R. 46).

R. J. Doss, Assistant General Freight Agent, Atlantic Coast Line Railroad, testified:

> The average distances to Chicago are, from the three important Gulf ports, 896 miles, and from the three principal South Atlantic ports, 1,054 miles. The South Atlantic port lines do not feel that they can afford to carry their rates to Chicago on Ohio River combination as against the rates announced by the Illinois Central Railroad from Gulf ports. Chicago is itself an important market and is representative of a large consuming territory south and west of Chicago. Accordingly, the South Atlantic port lines determined to establish rates from South Atlantic ports to Chicago 4 cents on rosin and 7 cents on turpentine higher than from New Orleans and other Gulf ports (R. 75).
>
> * * * * *
>
> To the destination territory east of Chicago the suspended rates from Gulf ports are made on Ohio River combination and this basis was also observed from South Atlantic ports ex-

cept that in no case were the rates from South Atlantic ports to this territory made higher than from Gulf ports.

The Illinois Central Railroad operates its own lines all the way direct from New Orleans to Chicago. It has been the position of the South Atlantic port lines that, in their own interest, as well as in the interest of the naval store shippers located on their lines, it is necessary for the South Atlantic port lines to preserve a certain relationship as between their rates from the southeast, on the one hand, and the rates of the Gulf port lines, on the other hand, in making rates to Chicago. We have always had to have that in mind in fixing naval stores adjustment from the South Atlantic ports particularly (R. 75–76).

* * * * *

In the complaint of the *Western Paper Makers Chemical Company* vs. *Director General*, Docket No. 13157, an attack was made on the rates on rosin in carloads from southern points of origin east of the Mississippi River to Kalamazoo and Grand Rapids. The complaint alleged that the rates from the south to Kalamazoo are in excess of rates from the same points to Chicago, Milwaukee, Detroit, and Jackson * * * (R. 76).

To Milwaukee from South Atlantic ports we have a through rate on rosin but not on turpentine (R. 79).

* * * * *

As to what condition at Chicago makes it necessary or makes it important that we put rates into there on the basis we have put them in.

The existence of the Illinois Central's one-line haul and the fact that they established a rate from New Orleans to Chicago, makes it necessary for us to—it is to enable our shippers to get into Chicago and that surrounding territory on a fair basis with New Orleans (R. 86).

* * * * *

The Illinois Central Railroad carriers a higher rate on naval stores from New Orleans to Kalamazoo than it carriers to Chicago. The distance via the route of the Illinois Central to Kalamazoo is substantially greater than the distance to Chicago (R. 87).

W. D. Cook, General Freight Agent, Gulf & Ship Island Railroad, testified:

In working out this revision the carriers followed substantially the existing principle, in other words, the present rates from the Mississippi Valley to Chicago are less than combination, also less than the rates to Kalamazoo, and so far as I know, there has never been any definite or fixed relationship in the rates on naval stores to Chicago and those to Kalamazoo and other C. F. A. points. As I have previously explained, the suspended rates to Chicago are made substantially the present differences over St. Louis and rates to Milwaukee are made substantially the present differences over the rates to Chicago. This was approved by the Illinois Lines. Kalamazoo, Detroit, and Jackson are in C. F. A. territory and as I have previously stated, the rates to destinations in the C. F. A. territory were made on Ohio River combination, using

the suspended rates to the Ohio River plus the proportions desired by the C. F. A. carriers beyond. The suspended rates from the Mississippi Valley to Kalamazoo, Detroit, and Jackson are the same, although higher than to Chicago. Further, Kalamazoo is not intermediate to Chicago on traffic from the Mississippi Valley. Further, that the distance from New Orleans to Chicago is approximately 912 miles, whereas the distance from New Orleans to Kalamazoo is 1,095 miles over the route through Cincinnati, the latter being obtained from the Official Guide, using southern railway distance, 835 miles, to Cincinnati plus 260 miles via the Pennsylvania beyond. Further, the distance from New Orleans to Kalamazoo via Chicago and the Michigan Central is 1,053 miles. In other words, Kalamazoo is not intermediate to Chicago from the Mississippi Valley (R. 93).

* * * * *

I am speaking for the Illinois Central as well as other lines in the Mississippi Valley, with the exception of the L. & N. I presume you might call the Illinois Central the rate-making line on naval stores between New Orleans and Cairo and New Orleans and Chicago. The Illinois Central is the direct line from there. They do not make the rates to Evansville, Louisville, and Cincinnati (R. 94).

* * * * *

As to whether, if we are justified in applying a group adjustment or blanket adjustment at points of origin having a spread of 200 miles, I still think that there should be a difference

in the rate from the Gulf ports, Pensacola to Kalamazoo over Chicago; I do. I do not think that the conditions are as controlling from Pensacola to Kalamazoo as from New Orleans to Chicago. The direct line of the Illinois Central makes the rate from New Orleans to Chicago but not from Pensacola. There is no other line in Pensacola beside the L. & N., which I represent (R. 96).

* * * * *

"A. Weil, from New Orleans to Chicago there is a one-line haul on the Illinois Central Railroad. If you get over to Kalamazoo you get into another territory, involving hauls over several lines."

There was always a one-line haul from New Orleans to Chicago; that condition has not been changed by the publication of the tariff. There has been very little change in the rate to Chicago. The change in the rate to Chicago was based upon the change in the rate to St. Louis, as we preserved practically the same differential, Chicago over St. Louis, as in effect to-day. The advantage that Chicago enjoyed, if any, due to the single-line haul to New Orleans, was effective in the old rates (R. 96–97).

L. L. Drescher, Assistant to the Vice President in charge of traffic, Louisville & Nashville Railroad, testified:

As to how I justify the per ton mile earnings of 27 cents, Pensacola to Kalamazoo, versus 27.2 cents, Pensacola to Chicago: The Illinois Central has its own line from New Orleans to Chicago. It fixes the rate on rosin

and turpentine, or did fix the rates thereon, from New Orleans to Chicago over its one line. The L. & N. Railroad gets into Chicago from Pensacola by a two-line haul. We are giving the shippers on our line the same rate as the Illinois Central gives the shippers on its line from its corresponding port. At Kalamazoo the Illinois Central has established a higher rate than it has established for its one-line haul to Chicago. We are meeting that competition at Kalamazoo. The fact that there may be some disparity in distance does not justify or require on our part, going below the competition of the Illinois Central.

I am not trying to justify the rate to Kalamazoo; I am justifying the rate by our relationship. I attempt to justify it by our relationship of our rates to the rates of the Illinois Central. If the Illinois Central can not justify it, we can not justify it (R. 99–100).

* * * * *

The Illinois Central fixed the competition, regarding the Kalamazoo versus Chicago situation, which we met. With respect to Grand Rapids and Milwaukee, we did the same thing there as we did with respect to Chicago and Kalamazoo. We made our rates the same as the rates from the other Gulf port lines. The Milwaukee rate was made over the Chicago rate, and the Illinois (Central) fixed the rate to Chicago. That is my justification of the Milwaukee rate. I am only attempting to justify the proposed rate to Grand Rapids only by way of relationship to the rates from the other ports. If the Illinois Central failed

to justify this so-called New Orleans-Chicago-Milwaukee compelled situation, we would of course keep our shippers in a position to compete with those on other lines.

We do not undertake an advance of the proposed rate from Grand Rapids to Pensacola other than I have presented in my testimony (R. 100).

S. C. MATTHEWS, Assistant Freight Traffic Manager, Pennsylvania Railroad, Southwestern Region, New Orleans, testified:

The C. F. A. lines generally feel that the rates under suspension should be permitted to become effective and believe that those rates are reasonable rates with the possible exception of some few modifications. They do not believe that from the southeast the rates are properly aligned in that tariff to Kalamazoo versus Chicago or Grand Rapids versus Milwaukee. From the Gulf ports, speaking of them as a whole, the C. F. A. lines feel that there are certain conditions that warrant possible special treatment. In other words, on account of the one-line haul, the Illinois Central Road from New Orleans to Chicago, that possibly there is a condition that would warrant, from New Orleans to Chicago, lower rates than would prevail from other Gulf ports or from the southeast including New Orleans, Gulfport, Mobile, and Pensacola. In the suspended tariff from the southeast there are two sets of rates under suspension to Chicago. One is confined in the application to the Chicago and Eastern Illinois, Monon and Illi-

nois Central roads. The other rates apply via the other lines and are somewhat higher than those applicable to the three roads mentioned. The C. F. A. lines feel that if the Illinois Central from New Orelans to Chicago establishes a rate and the other lines from New Orleans feel it proper that they should meet that rate that in so doing they should restrict the routing of it so that it would apply only to directly intermediate points to Chicago via reasonably direct routes from New Orleans to Chicago through the Ohio River (R. 101).

* * * * *

I do not think that the South Atlantic port lines should apply from South Atlantic ports to Chicago the same rate as from New Orleans to Chicago because in my opinion there is an entirely different carrier situation and condition. There is a one-line haul. I believe that the combination basis that has been referred to by Mr. Doss is the proper basis for the making of rates from the South Atlantic ports to all points within C. F. A. territory. (R. 102).

* * * * *

Q. Leaving the one-line haul out of the question entirely, do you think that we are not justified in having the same rate to New Orleans?

A. I can not leave the one-line haul out of it because it is there. It is a fact and you can not leave it out. The fact that practically all of the naval stores production is east of the Illinois Central is not at all a justification for putting that great producing territory in the

same rate situation to Chicago that the Illinois Central has.

Q. You consider that the only thing is that we must have a one-line haul into Chicago to get a similar rate?

A. You should have transportation conditions, yes, sir; and in that case it is a one-line haul. Any locality is placed at disadvantage when it has only a one-line haul. One of the criticisms I offered of the proposed adjustment was on the ground of the relationship which it will create as between Kalamazoo and Grand Rapids on the one hand and Chicago on the other. Grand Rapids and Milwaukee was another. The basis upon which the proposed rates to Kalamazoo and Grand Rapids are constructed as they now appear are satisfactory to the C. F. A. lines to those points, but not when considered with the rates published from the southeast to Chicago. I would not say that the rates as proposed to Kalamazoo and Grand Rapids are too high. I consider them reasonably low rates. I consider that the rates from the southeast to Chicago in the suspended tariff are too low (R. 104).

II

THE RATES ON OTHER ARTICLES AND COMMODITIES FROM THE TERRITORIES TO THE DESTINATIONS IN QUESTION ARE MADE ON THE SAME BASIS AS THE RATES ON NAVAL STORES

R. J. Doss, Assistant General Freight Agent, Atlantic Coast Line Railroad, testified:

The rates from the Gulf ports to Chicago and intermediate territory are made by the

Illinois Central Railroad and those rates are applied via all routes from the Gulf ports and the Mississippi Valley territory, so they have only that one set of rates to Chicago. Now, when we come to fix our rates from the southeast certain of the lines would join us in the differential basis over New Orleans. Certain other lines would not join us but insisted that the rates be made on combination as to Chicago. There are two sets of rates applying only from the Carolinas and the southeast to Chicago. The territory that lies east of the Louisville & Nashville is the territory from which the two sets of rates apply. That is the boundary line where two sets of rates apply and one set of rates applies. To C. F. A. territory east of Chicago the rates from both the Gulf ports and the southeast are made by the use of the combination of those rates to the river plus the specifics of the C. F. A. lines beyond[4] (R. 123).

* * * * *

The present rate on petroleum products from New Orleans to Chicago via the Illinois Central is 36 cents and via the other lines it is 38½ cents. The other lines did not feel that they could go as low as the rate of the Illinois Central. That same thing is true of the rate to Indianapolis. The rate is via the Illinois Central 36 cents and via the Louisville

[4] It does not appear whether this statement of the witness applied to the general structure of all rates or to rates on naval stores only. Even if the latter, other evidence indicates that the general structure of all rates is similar to that upon which the rates on naval stores are made.

& Nashville and other lines is 38½ cents. The rate on petroleum road oil from New Orleans to Chicago via Illinois Central is 30½ cents and via the other lines 32 cents. In other words 30½ cents was thought to be so low on petroleum road oil that no line except the Illinois Central would participate in it (R. 124–125).

R. L. TUTTLE, Traffic Manager for Tanglefoot Company and other companies, testified:

> Exhibit No. 146 shows the relation which the rates to other points bear to the rate of Grand Rapids, viz: The first-class proposal to Chicago is 92.4%, rosin 77.1%; Detroit class rate 100%, rosin rate 99%. From the Gulf ports the class rate proposed to Milwaukee is 96.2, while the rosin rate proposed to Milwaukee is 83⅓% of the proposed rate to Grand Rapids. The same relative comparison is carried out as to Savannah (R. 124).

S. C. MATTHEWS, Assistant Freight Traffic Manager, Pennsylvania Railroad, Southwestern Region, New Orleans, testified:

> The naval stores rates from the south for a great many years have been constructed on rates on a basis adopted by the southern roads up to the Ohio River to which were added certain arbitraries or specifics that have been served upon them by the northern roads, those specifics representing originally an average percentage north of Cincinnati and the then published through rates from New Orleans to the various destinations within C. F. A.

> territory, the percentage being an average of the per cent north of the river to each given destination via all of the C. F. A. lines serving that destination (R. 101).

GEORGE L. BOLENDER, Traffic Manager for Chemical Manufacturing Company and other companies, testified:

> The rates on rosin from southern producing points to Kalamazoo have always been higher than the rates to Chicago and Detroit. In some cases they have been higher than the rates to Grand Rapids, 50 miles farther north and almost uniformly they are and have been higher than the rates to Milwaukee (R. 113).

The testimony before the Commission embraced 748 typewritten pages and the exhibits extended the record to nearly 1,200 pages (R. 154).

The early exhibits offered by Witness Doss disclose a complete history of the rates on naval stores. Every phase of the subject was examined. Even reference at random to exhibits will indicate the thoroughness with which the whole subject was covered.

Exhibit 41 relates to per car mile earnings on rosin to Cincinnati, Chicago, Kalamazoo, and other points (R. 132).

Exhibit 42 relates to distances (R. 132).

Exhibit 44 relates to a comparison of suspended rates and per car-mile earnings on rosin with rates and per car-mile earnings on peanuts (R. 132).

Exhibit 50 covers the same subjects with respect to lumber (R. 134).

Exhibit 131 is a comparative statement of rates on asphalt, petroleum products, oyster shells, bags, and waste paper, moss and pulp board, with rates on rosin and turpentine from New Orleans and Mobile to Fort Wayne, Grand Rapids, Milwaukee, Chicago, and other points, showing mileage, present rates on other commodities and proposed rates on rosin and turpentine, average loading, per car revenue, and per car-mile earnings (R. 149).

Exhibit 144 shows distances, present and proposed rates, and ton-mile earnings, applying on rosin, carloads, from Savannah to Grand Rapids, Chicago, Milwaukee, and other points (R. 152).

The District Court thus summarized the situation (R. 59, 60):

> It will be observed that no charge of discrimination in South Atlantic rates is made. Indeed, that rate to Kalamazoo is the same as to Chicago and Detroit, and two cents less than to Milwaukee, and to Grand Rapids is one cent less than to Milwaukee. From the Gulf territory, however, Kalamazoo's rate is the same as Milwaukee's, viz: One cent less than Detroit's, but two cents higher than Chicago's; and Grand Rapid's rate is one cent higher than Milwaukee's. But the direct and logical route from Cincinnati to Kalamazoo and Grand Rapids does not pass through either Chicago, Milwaukee or Detroit. * * * The Commission further found

> that the Illinois Central controls the rates from New Orleans to Chicago, and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made (91 I. C. C. 226). We think that neither these findings nor the basing of the Mississippi Valley rate to Milwaukee upon the Chicago rate can be pronounced arbitrary or beyond the Commission's authority. It seems clear that by neither the old nor the later suspended Gulf port tariffs was the rate to Cincinnati regarded as the key rate for Chicago and Milwaukee. The charge of discrimination therefore can not be sustained. *Seaboard Air Line Ry.* v. *United States*, 254 U. S. 57–62.

In *Interstate Commerce Commission* v. *Louisville & Nashville*, 227 U. S. 88, 92, in holding that "a finding without evidence is beyond the power of the Commission" (227 U. S. 92), but that there was evidence in the record sufficient to sustain the order, this Court said (227 U. S. 98):

> It is unnecessary in this case to review each of the matters discussed, ruled and found by the Commission in its Report and only the more salient facts will be mentioned. For the validity of the order does not necessarily depend upon the correctness of each of these findings, so that the breaking of one or many links by disproof would destroy the chain upon which the order depended. These findings are collateral and if correct might be confirmatory of the ruling, which, however,

might still be sustained if some of these statements were eliminated. The question is whether there was substantial evidence to support the order.

III

CONCLUSION

The decree should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

○

No. 312

In the Supreme Court of the United States

OCTOBER TERM, 1925

WESTERN PAPER MAKERS' CHEMICAL COMPANY AND TANGLEFOOT COMPANY, APPELLANTS

v.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, APPELLEES

BRIEF FOR INTERSTATE COMMERCE COMMISSION

P. J. FARRELL,
R. H. KELLY,
For Interstate Commerce Commission.

MARCH, 1926.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1926

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 312

WESTERN PAPER MAKERS' CHEMICAL COMPANY AND Tanglefoot Company, appellants

v.

THE UNITED STATES OF AMERICA AND THE INTERstate Commerce Commission, appellees

BRIEF FOR INTERSTATE COMMERCE COMMISSION

STATEMENT

The citation of the decision of the lower court in this case is 7 F. (2d) 164.

This is an appeal from a final decree of the United States District Court for the Western District of Michigan, Southern Division, denying the injunction asked for by appellants and dismissing the petition; and the matters complained of arose out of action taken by the Interstate Commerce Commission in a proceeding entitled Investigation and Suspension Docket No. 1900. The proceeding covered rates on rosin and other naval stores from points of origin south of the Ohio River, including south Atlantic and gulf ports to destination points

north of the river, including Kalamazoo and Grand Rapids, Mich., Chicago, Ill., and Milwaukee, Wis. Appellants' complaint, however, is confined to the rates on rosin to Kalamazoo and Grand Rapids as compared with the rates on that commodity to other destination points, particularly Chicago and Milwaukee.

The proceeding was instituted by the Commission on its own motion pursuant to protests against the rates mentioned, included in tariffs filed in the Commission's office by carriers engaged in the transportation of naval stores between the aforesaid points of origin and destination, and the matters complained of are covered by the Commission's report and order of March 5, 1924, 87 I. C. C. 740, as modified by the Commission's report and order of June 18, 1924, 89 I. C. C. 634 (Rec. 9–33, 35–40).

In its report of March 5, after stating that the rates filed by the carriers as aforesaid constituted a comprehensive revision of the rates on naval stores from all points of production (Rec. 10), the Commission made pertinent findings and statements as follows:

> We find that the proposed rates on naval stores from southeastern and Mississippi Valley, and Carolina territories to the destinations in the suspended schedules have not been justified. An order will be entered requiring the respondents to cancel the suspended schedules.

We further find that just and reasonable rates for the future from Jacksonville and points in Atlanta subterritory, and from New Orleans, and points in Montgomery subterritory and Mississippi Valley territory to representative destinations will be those set forth below:

	From Jacksonville		From New Orleans	
	Rosin	Turpentine	Rosin	Turpentine
	Cents	*Cents*	*Cents*	*Cents*
Cincinnati	33	52	33	52
Louisville	33	52	32	51
Cairo	33	52	28	44
St. Louis	37	58	31	49
Memphis	31	49	25	40
Nashville	30	47	30	47
Chicago	40	63	37	58
Kalamazoo	40	63	39	63
Milwaukee	41	64	38	60
Grand Rapids	41	64	40	63
Cleveland	39	62	40	63
Detroit	40	63	40	63
Columbus	37	58	37	58
Indianapolis	37	58	36	57
Buffalo	42	66	43	67

The record does not afford a sufficient basis for prescribing rates from Carolina territory. Rates should be published in harmony with those prescribed from the Southeast.

Rates to other points in central territory should be made with relation to the rates to the points herein set forth.

* * * * *

We find that reasonable rates from points in Florida on the Perry branch of the Atlantic Coast Line Railroad will be rates 3

cents on rosin and 6 cents on turpentine higher than the rates from Jacksonville, and that reasonable rates from other points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line will be rates 5 cents on rosin and 10 cents on turpentine higher than the rates from Jacksonville. (Rec. 26–27.)

* * * We find that the rates from points on the short-line railroads from which higher rates are proposed in the suspended tariffs should not exceed the rates contemporaneously in effect from junction points of such lines with the trunk lines by more than 3 cents on rosin and 6 cents on turpentine. (Rec. 28.)

We are not to be understood as here prescribing the grouping of points of origin, but we merely approve the grouping proposed by respondents and prescribe reasonable rates from the groups. Our findings in this case are based upon the record before us and are without prejudice to any different conclusions which may be reached upon a different showing with respect to the entire adjustment or rates to particular points.

Except in comparatively few instances, no justification was offered for the continuance of fourth-section departures. The portions of such applications which seek relief from the provisions of the fourth section with respect to rates on naval stores will be denied. This denial will not be made effective until May 20, 1924. In specific instances where carriers believe there is a reasonable ground

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for the continuance of fourth-section departures, applications may be filed showing specifically and in detail the departures sought to be continued and the reasons therefor.

An order will be entered requiring the cancellation of the suspended schedules. No order prescribing the rates herein found reasonable will be entered at this time. The respondents will be expected to establish such rates on or before May 20, 1924. If this is not done, we will enter an appropriate order. (Rec. 29.)

The body of the order of March 5 reads:

It appearing, That by orders dated August 30, 1923, and September 17 and 18, 1923, the Commission entered upon a hearing concerning the reasonableness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until January 29, 1924, and that the operation of said schedules was voluntarily deferred by respondents herein until March 29, 1924;

It further appearing, That a full investigation of the matters and things involved has been had, and that the division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel such schedules as are now

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under postponement, on or before April 15, 1925, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act. (Rec. 33.)

The modification referred to is shown by the order of June 18, 1924, the body of which is as follows:

It appearing, That on March 5, 1924, the Commission entered its original report in the above-entitled proceeding; that a petition has been filed on behalf of respondents for modification of the findings in said report; and the Commission having on the date hereof made and filed a supplemental report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the findings in the original report, 87 I. C. C. 740, be, and they are hereby, modified to provide that rates from Pensacola, Fla., and points in Montgomery subterritory to Memphis, Tenn., shall not exceed 28 cents per 100 pounds on rosin and 44 cents per 100 pounds on turpentine; that the rates to Milwaukee, Wis., shall not exceed 42 cents per 100 pounds on rosin and 66 cents per 100 pounds on turpentine from Jacksonville and Atlanta subterritory and 39 cents per 100 pounds on rosin and 62 cents per 100 pounds on turpentine from New Orleans and points in Montgomery sub-

territory and Mississippi Valley territory; and that the rates from points in Montgomery subterritory on and east of the lines of the Central of Georgia and Louisville & Nashville Railroads from Columbia, Ala., to Crestview, Fla., to points of destination here under consideration shall not exceed the rates from points in Atlanta subterritory to the same destinations. (Rec. 40.)

It will be observed that the modifications, so far as material here, simply increased the rates per 100 pounds on rosin to Milwaukee from 41 cents to 42 cents from Jacksonville and Atlanta subterritory, and from 38 cents to 39 cents from New Orleans and points in Montgomery subterritory and Mississippi Valley territory.

The relief asked for by appellants as shown in paragraphs 2 and 3 of the prayer of their petition is:

2. That a temporary and a permanent injunction issue restraining the order of the Interstate Commerce Commission establishing the said tariff so far as it relates on the through rate of rosin to the cities of Kalamazoo and Grand Rapids, Mich.

3. That a decree be made modifying the order of the Interstate Commerce Commission in part so far as the same relates to the establishment of a through rate on rosin from points south of the Ohio River to points in States north of the Ohio River. (Rec. 8–9.)

The final decree denying the injunction asked for by appellants and dismissing the petition is dated January 3, 1925 (Rec. 61), and the points relied upon in this court by appellants are:

> 1. That there was no evidence before the Interstate Commerce Commission from which the Interstate Commerce Commission could fix the through rate on rosin from points of origin to the cities of Kalamazoo and Grand Rapids, Mich., as fixed by said Commission in its findings, a copy of which is attached to the Bill of Complaint.
>
> 2. That the through freight rates on rosin from points of origin to Kalamazoo and Grand Rapids, Mich., are unjustly discriminatory and violative of the " long-and-short-haul " clause, section 4, of the Interstate Commerce Act, * * *. (Rec. 155.)

ARGUMENT

I

The Commission's orders of March 5 and June 18, 1924, are justified by the findings in its reports of those dates, and the findings are fully supported by the record upon which they are based.

We have seen that the order of March 5 simply required the carriers to cancel the increased rates on rosin and other naval stores they had attempted to put in force, and that the order of June 18 was a benefit to the appellants, because it authorized an increase to the extent of 1 cent per 100 pounds in the rates on rosin to Milwaukee and did not authorize any increase in the rates on that com-

modity to either Kalamazoo or Grand Rapids. It is therefore difficult to understand how, consistently, the court can comply with appellants' request for an injunction restraining enforcement of the orders, or of either of them, in so far as they relate to the rates on rosin to the latter two cities, or to any other points of destination north of the Ohio River.

Appellants' complaint, however, does not relate to any requirement contained in either of the orders mentioned, but is confined instead to increases in the rates on rosin authorized by the Commission in its report of March 5, as modified by its report and order of June 18; and for the purpose of showing the increases thus authorized we quote from the decision of the lower court as follows:

> The Commission's order here attacked was made as the result of a suspension proceeding ordered by the Commission because of protests by producers and dealers in and shippers of naval stores, including plaintiffs, against a proposed comprehensive revision by carriers, in both the Southeastern and Mississippi Valley territory, of the rates on naval stores from all points of production. By the then prevailing tariffs, the rates from all South Atlantic ports to a given destination were the same, regardless of specific origin, some through rates being published to certain points in certain territory, made up of the local rate to the Ohio River plus a "specific" published by the line north of the river. * * *

By these tariffs the rate on rosin to Cincinnati was 27 cents per 100 pounds; to Chicago, 39 cents from South Atlantic and 30 cents from Gulf ports; to Detroit, 39.5 cents from South Atlantic and 33 cents from Gulf; to Louisville, 27 cents from South Atlantic and 24.5 from Gulf; to Milwaukee, 44.5 cents from South Atlantic and 33 cents from Gulf; to Kalamazoo, 39 cents from South Atlantic and 34.5 from Gulf; to Grand Rapids, 44.5 from South Atlantic and 34.5 from Gulf. * * * * (Rec. 53-54.)

Upon full hearing, to which both plaintiffs were parties, the Commission found the proposed new rates not justified, ordered a cancellation of the suspended schedules, and found the following to be just and reasonable rates for the future from South Atlantic and Gulf ports, respectively: Cincinnati, 33 cents; both routes; Chicago, 40 cents and 37 cents; Milwaukee, 41 cents and 38 cents; Kalamazoo, 40 cents and 39 cents; Grand Rapids, 41 cents and 40 cents; Detroit, 40 cents by both routes (87 I. C. C. 754). The rate to Milwaukee was later made 42 cents and 39 cents, thus making the South Atlantic rate to Kalamazoo the same as to Chicago and Detroit, and the rate to Grand Rapids 1 cent less than to Milwaukee; and from the Gulf the rate to Milwaukee 2 cents higher than to Chicago, and to Grand Rapids 1 cent higher than to Milwaukee (89 I. C. C. 637; 91 I. C. C. 226). It is these rates to Kalamazoo and Grand Rapids, so found by the Commission to be

just and reasonable, which the bill before us seeks to set aside. (Rec. 55.)

Plaintiff's main contention, broadly stated, is that there was no evidence before the Commission supporting the rates to these two cities as so finally fixed. (Rec. 56.)

However, appellants' contention that there is no evidence in the record which supports the Commission's finding that the rates prescribed by it for the transportation of rosin to Kalamazoo and Grand Rapids are reasonable is confined within limits narrower than those above indicated. In this connection pertinent and material statements made by the lower court, and not assigned as errors by apellants, are as follows:

* * * The entire record before the Commission is in evidence.

Plaintiffs concede that on the hearing before the Commission the lines south of the Cincinnati gateway offered evidence tending to show the reasonableness of that portion of the through rate from the points of origin to the river. The testimony so introduced related to both South Atlantic and Gulf ports. The Cincinnati rate therein concerned is the same that the Commission found reasonable, viz, 33 cents. The substantial criticism thus necesarily is that there was no testimony sustaining the specifics north of the river or of the rate as a through rate. (Rec. 56–57.)

We have seen that the increase made by the Commission in the rate on rosin from points of origin to the river crossing, namely, Cincinnati, was 6 cents per 100 pounds, and if this 6-cent increase were added to the rates on rosin to Kalamazoo and Grand Rapids which were in effect prior to the time when the aforesaid revision was made by the carriers the rates to Kalamazoo and Grand Rapids would be, respectively, 45 and 50.5 cents from south Atlantic ports and 40.5 cents from Gulf ports, while the rates prescribed by the Commission for the transportation of rosin to Kalamazoo and Grand Rapids are, respectively, 40 and 41 cents from south Atlantic ports and 39 and 40 cents from Gulf ports. It thus appears that the Commission did not make any increases in the specifics to be added to the rates to Cincinnati for the purpose of making through rates to Kalamazoo and Grand Rapids, and since no increases were made in the specifics no evidence was necessary to justify increases.

What is said above shows plainly, we submit, that appellants' contention concerning the absence of evidence upon which to base the rates prescribed by the Commission for the transportation of rosin to Kalamazoo and Grand Rapids has no foundation upon which to rest, and also establishes that there is no merit in appellants' assignment of error No. 2, which is to the effect that the lower court erred in treating as evidence the Matthews exhibits numbered 85 and 86 (Rec. 140–141) which were

introduced into and made a part of the record before the Commission for the purpose of showing chronologically the history of specifics applied to the transportation of rosin and turpentine north of the Ohio River during a comparatively long period of years.

In refutation of appellants' contention concerning the absence of evidence in the record before the Commission, the lower court further said:

> * * * But while we are cited to no direct testimony of the reasonableness of any one through rate or specific, there was testimony tending to show that the suspended rates from Ohio River crossings north, on the basis of rates south of the river as factors, were reasonable; * * * And we think that for this and other reasons there can not be said to be an absence of competent evidence thereof. It affirmatively appears that the specifics with which we are concerned north of the river are substantially less than the " specifics " or proportionals in actual use for a substantial period prior to the proposed revision which was the subject of the suspension proceeding. For example: Kalamazoo's old South Atlantic rate of 39 cents was 12 cents above the then river rate of 29 [27] cents. By the 40-cent southeastern rate to Kalamazoo which the Commission adopted the specific is but 7 cents above the new river rate. By the old Gulf schedules Kalamazoo's rate of 34.5 cents was 4.5 cents above Chicago and

7.5 cents above Cincinnati, while her new rate of 39 cents is but 2 cents above Chicago and 6 cents above Cincinnati. Grand Rapids' old South Atlantic rate of 44.5 cents was 17.5 cents above the River rate, while her new rate is but 8 cents above the River rate. Her old Gulf rate of 34.5 cents was 4.5 cents above Chicago and 7.5 cents above Cincinnati, while her new Gulf rate is but 3 cents above Chicago and 7 cents above Cincinnati. The increases of Kalamazoo's rates by both routes and of Grand Rapids' Gulf rate were thus not only due entirely to the increases of rates to the river and (apparently) to Chicago especially, but represented an actual decrease of specific. As has already appeared, Grand Rapids' South Atlantic rate is 3.5 less than her old rate, while Kalamazoo's South Atlantic rate is but 1 cent higher than her old. (Rec. 57.)

Notwithstanding the above statement of the court to the effect that it had not been cited to direct testimony bearing upon the reasonableness of any one through rate or specific, we will endeavor to show that the record contains a large volume of testimony and other evidence of this character.

The principal witness for the carriers in the proceeding before the Commission was R. J. Doss, assistant general freight agent of the Atlantic Coast Line Railroad Company, who introduced exhibits numbered 1 to 68, inclusive, 87 to 90, inclu-

sive, and 154 and 155. In his Exhibit 24 he compared the all-rail rates suspended by the Commission with the water-and-rail rates, from Savannah and Jacksonville to the destination territory north of the river here involved; in Exhibits 25 to 28, inclusive, he compared the rail rates on rosin and turpentine with the rates on lumber, cotton, vegetables, and oranges, from representative points of origin south of the river to representative points of destination north of the river, and in Exhibit 29 he compared the rates on rosin and turpentine, which are commodity rates, with the class rates which, in the absence of commodity rates, would be applicable to the transportation of rosin and turpentine. (Rec. 80, 129–130.)

Other similar comparisons are contained in Exhibits 38 to 48, inclusive (Rec. 80–82, 131–134), and include comparisons between the rates suspended by the Commission and those applied to the transportation of sulphuric acid in tank cars, petroleum and petroleum products, lubricating oil, scrap iron, hides, and lard compound.

In connection with the comparisons made by him Mr. Doss, among other things, said:

> * * * I feel that this comparison of the actual rates and earnings on rosin with the rates and earnings on lumber from this same territory to the same points of destination is very strong and convincing evidence of the reasonably low character of our proposed rosin rates. (Rec. 82.)

> * * * I have undertaken to compare these suspended rates with the rates on other commodities and revenue on other commodities, selecting practically every variety of commodity that could be found that moves in this territory, and in comparison with the rates and revenues on other commodities I feel that the rates as proposed in this suspension are reasonably low rates. * * *. (Rec. 83.)
>
> In the short time we had it was not possible to deal with every origin and with every destination. We took what we consider, and what I think are, fairly representative points. (Rec. 87.)

We do not deem it necessary to set forth in full the evidence in the record bearing upon the question of reasonableness, but think best to call the attention of the court to the fact that, in addition to comparisons between rates from representative points of origin south of the Ohio River to representative points of destination north of the river, the Commission had before it representative distances, car-mile earnings, etc., as well as the history of rates on rosin and turpentine and comparisons of earnings on many different classes of traffic. We call particular attention to Exhibits 6 to 13, inclusive, 16, 17, 20, and 46 to 50, inclusive. (Rec. 126–128, 133, 134.) In connection with some of the comparisons, the Commission, among other things, said:

> The proposed rates were compared with the rates from the same points of origin to eastern trunk-line destinations and, for similar distances, are lower. * * * (Rec. 18.)
>
> Other comparisons were made with the rates from southern points to northern destinations on glucose, sulphuric acid, alcohol, petroleum, peanuts, cottonseed oil, scrap iron, hides, lard compound, tallow, lumber, and other commodities of which there is a substantial movement. (Rec. 19.)

In speaking of the rates to Grand Rapids, Mr. Doss made statements and answered questions as follows:

> I have been aware of the existence of this complaint and insistent complaint, upon the part of the destination interests in respect to certain alleged maladjustments and unreasonableness of rates, and still, I do not here set up any comparisons at Milwaukee and Grand Rapids.
>
> I think, however, that comparisons showing Kalamazoo and Chicago are fairly representative. I know what the rates are to Grand Rapids and to Milwaukee. They are shown in the tariffs.
>
> * * * * *
>
> Q. However, so far as this case is concerned, do I understand that you are not offering any defense of the proposed rates to Grand Rapids?
>
> A. I think I am defending them.

Q. Where is your defense?

A. All th-ough [through] my testimony has been defense.

Q. Not in respect to Grand Rapids. Where is your defense of Grand Rapids? I am asking you specifically about that.

Q. [A.] My whole testimony has dealt with the rates to Grand Rapids and the rest of these destinations.

Q. Your testimony has dealt with the rates to other points, but it has not dealt with the rates to Grand Rapids and Milwaukee, in any substantial measure?

Q. [A.] The situation at Grand Rapids is not any different from what it is at the other Michigan points.

Q. Do you know that to be a fact?

A. The rates speak for themselves. The exhibit shows the rates.

Q. Where are the rates? There are no rates to Grand Rapids, and that is why I am asking you. Where is your defense here? If you have not any, just say so, and that will satisfy me.

* * * * *

[A.] I want it clearly understood that there was no ulterior motive in selecting Kalamazoo and Chicago and not selecting the others. It is humanly impossible to take all these points. The rates will show for themselves, and I think what I have said about Kalamazoo is equally applicable to Grand Rapids. (Rec. 87, 88.)

In view of the foregoing, we find it difficult to understand how, consistently, it can be contended

that the rates prescribed by the Commission, and complained of by appellants, are not based upon substantial evidence.

II

The rates prescribed by the Commission for the transportation of rosin to Kalamazoo and Grand Rapids are neither unjustly discriminatory nor in violation of section 4 of the interstate commerce act.

We do not deem it necessary to discuss separately appellants' contention that the rates prescribed by the Commission for the transportation to Kalamazoo and Grand Rapids are unjustly discriminatory, for the reason that the contention, according to our understanding, is based upon appellants' further contention that the rates to those two cities are in violation of the prohibition against a greater charge for the shorter than for the longer haul, contained in section 4 of the interstate commerce act. The lower court described the contentions and stated the reasons why they can not be sustained as follows:

> * * * By plaintiffs' brief in this court the charge of discrimination is, at best, faintly presented. The bill alleges generally that rates from the Gulf ports to Kalamazoo are higher than from the same point of origin to Chicago, although the latter is the longer haul; that the rates from Mississippi Val-ey [Valley] territory to Grand Rapids are higher than the rates from the same points of origin to Milwaukee, " which is a

longer haul"; and, more specifically, that the rate to Cincinnati was described by the carriers at the suspension hearing to be the key rate to the territory beyond; that the distance from Cincinnati to Kalamazoo is less than to either Chicago or Milwaukee, and from Cincinnati to Grand Rapids less than to Milwaukee; that transportation conditions to Kalamazoo and Grand Rapids were not shown to be less favorable than to Chicago and Milwaukee, and thus that Kalamazoo is directly intermediate to Chicago and Milwaukee, and Grand Rapids directly intermediate to Milwaukee by way of various worked and workable routes. It will be observed that no charge of discrimination in South Atlantic rates is made. Indeed, that rate to Kalamazoo is the same as to Chicago and Detroit, and 2 cents less than to Milwaukee, and to Grand Rapids is 1 cent less than to Milwaukee. From the Gulf territory, however, Kalamazoo's rate is the same as Milwaukee's, viz, 1 cent less than Detroit's, but 2 cents higher than Chicago's; and Grand Rapids' rate is 1 cent higher than Milwaukee's. But the direct and logical route from Cincinnati to Kalamazoo and Grand Rapids does not pass through either Chicago, Milwaukee, or Detroit. Nor does the direct and logical route from Chicago to Milwaukee pass through either Kalamazoo or Grand Rapids. Moreover, by one of the comparative earning schedules before referred to, the distance from Mobile to the points involved here were: To Cincinnati,

750 miles; Chicago (which is nearly 300 miles from Cincinnati), 858 miles; Milwaukee, 943 miles; Kalamazoo, 963 miles; Grand Rapids, 1,011 miles, and Detroit 1,021 miles. The Commission found that because of the absence of routing instructions Kalamazoo and Grand Rapids are technically intermediate to Chicago, Detroit, and Milwaukee by possible routes, although the record indicates that actual movement over such routes would be unusual. (91 I. C. C. 225.)

The Commission further found that the Illinois Central controls the rates from New Orleans to Chicago, and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made (91 I. C. C. 226). We think that neither these findings nor the basing of the Mississippi Valley rate to Milwaukee upon the Chicago rate can be pronounced arbitrary or beyond the Commission's authority. It seems clear that by neither the old nor the later suspended Gulf port tariffs was the rate to Cincinnati regarded as the key rate for Chicago and Milwaukee. The charge of discrimination therefore can not be sustained. *Seaboard Air Line Ry.* v. *United States,* 254 U. S. 57-62. We see no basis for the contention that the rates established by the Commission violate the fourth section of the act. The Commission found that the suspended rates did have that effect, and in cancelling those rates and ordering new rates denied applications for relief from fourth section depar-

> tures, with leave later to apply for relief where ground should exist therefor (87 I. C. C. 756); and in modifying the rate from Milwaukee as before referred to, by reason of a charge of discrimination as against Kalamazoo and Grand Rapids, permitted—without requiring—the carriers to keep open routes from points in the eastern portion of the New Orleans group through Grand Rapids to Milwaukee by reducing the Grand Rapids rates from such points (89 I. C. C. 637); and in its later order dismissing plaintiff's complaint, which asked injunction against the rate adjustment (91 I. C. C. 226–227), the Commission said not only that "the new adjustment will result generally in the removal of the existing fourth section departures in the origin territory," but "it is understood that the routing under the new adjustment will be so restricted as to remove the technical fourth section departures with respect to destination points hereinbefore referred to," which were Chicago, Milwaukee, Kalamazoo, and Grand Rapids. (Rec. 58–61.)

It thus appears that in so far as appellant's contentions relate to discrimination and violations of the long-and-short-haul clause of section 4 they are confined to rates on rosin from New Orleans and other Gulf ports to Kalamazoo and Grand Rapids as compared with rates on that commodity from the same points of origin to Chicago and Milwaukee, that is to say, the complaint of appellants

is that the Commission prescribed a rate for the transportation to Kalamazoo which is 2 cents per 100 pounds greater than the rate it authorized for the transportation to Chicago, and prescribed a rate for the transportation to Grand Rapids which is 1 cent per 100 pounds greater than the rate it authorized for the transportation to Milwaukee, notwithstanding that by way of certain routes the distance is greater to Chicago than to Kalamazoo and greater to Milwaukee than to Grand Rapids.

These contentions ignore entirely the fact that the Commission, in its report of March 5, 1924, declined to grant to the carriers relief from the provisions of section 4. In this connection pertinent language used by the Commission is as follows:

> Except in comparatively few instances, no justification was offered for the continuance of fourth-section departures. The portions of such applications which seek relief from the provisions of the fourth section with respect to rates on naval stores will be denied. * * * (Rec. 29.)

In making the contentions, appellants further fail to give effect to the fact that, by way of direct and usual routes, the distance is greater to Kalamazoo than to Chicago and greater to Grand Rapids than to Milwaukee. In this connection witness Doss, among other things, said:

> * * * In working out this revision the carriers followed substantially the existing principle, in other words, the present rates

> from the Mississippi Valley to Chicago are less than combination, also less than the rates to Kalamazoo, and so far as I know, there has never been any definite or fixed relationship in the rates on naval stores to Chicago and those to Kalamazoo and other C. F. A. points. * * *. (Rec. 93.)
>
> * * * Further, Kalamazoo is not intermediate to Chicago on traffic from the Mississippi Valley. Further, that the distance from New Orleans to Chicago is approximately 912 miles, whereas the distance from New Orleans to Kalamazoo is 1,095 miles over the route through Cincinnati, the latter being obtained from the Official Guide, using southern railway distance, 835 miles, to Cincinnati plus 260 miles via the Pennsylvania beyond. Further, the distance from New Orleans to Kalamazoo via Chicago and the Michigan Central is 1,053 miles. In other words, Kalamazoo is not intermediate to Chicago from the Mississippi Valley. * * *. (Rec. 93–94.)

And pertinent language of the lower court was as follows:

> * * * But the direct and logical route from Cincinnati to Kalamazoo and Grand Rapids does not pass through either Chicago, Milwaukee, or Detroit. Nor does the direct and logical route from Chicago to Milwaukee pass through either Kalamazoo or Grand Rapids. * * *. (Rec. 59.)

In its report of June 18, 1924, the Commission stated that if the carriers wish to transport naval stores, including rosin, through Grand Rapids to Milwaukee, they may do so by making such reductions in the rates to Grand Rapids as will enable them to avoid violations of section 4. Language used by the Commission in this connection is as follows:

> * * * If the respondents desire to keep open routes from Pensacola or other points in the eastern portion of the New Orleans group through Grand Rapids to Milwaukee, they will be able to do so by reducing the Grand Rapids rates from such points, but we shall not require them to do so. (Rec. 39.)

It appears to be true also that appellants pay no attention to the fact that the rates for the transportation of rosin to Chicago from Gulf ports are largely controlled by the single-line haul of the Illinois Central. Upon this point witness Doss, among other things, said:

> As to what condition at Chicago makes it necessary or makes it important that we put rates into there on the basis we have put them in.
>
> The existence of the Illinois Central's one-line haul and the fact that they established a rate from New Orleans to Chicago, makes it necessary for us to—it is to enable our shippers to get into Chicago and that sur-

rounding territory on a fair basis with New Orleans. (Rec. 86.)

The Illinois Central Railroad carries a higher rate on naval stores from New Orleans to Kalamazoo than it carries to Chicago. The distance via the route of the Illinois Central to Kalamazoo is substantially greater than the distance to Chicago. (Rec. 87.)

Pertinent language used by the Commission in its report of March 5, 1924, is:

> * * * The rates from New Orleans to Chicago and related points have been fixed by the single-line rates of the Illinois Central and are lower than to points in central territory. * * * (Rec. 13.)

In connection with the matter under consideration here, the Commission in its report of July 1, 1924, in *Western Paper Makers' Chemical Company* v. *Director General, as Agent, et al.*, 91 I. C. C. 223, said:

> * * * It appears that the Illinois Central by its single-line route controls the rates from New Orleans to Chicago and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made. * * * (Rec. 47.)

In the latter case the Commission found to be neither unreasonable nor unjustly discriminatory the rates on rosin in carloads from southern points

of origin east of the Mississippi River to Kalamazoo and Grand Rapids. (Rec. 41–47.)

Concerning the influence of the Illinois Central rates the lower court, among other things, said:

> * * * The rates from New Orleans to Chicago had been fixed by the single-line rates of the Illinois Central, and were lower than to other points in Central territory. (Rec. 54.)

For the reasons above set forth we insist that the appeal in this case should be dismissed.

Respectfully submitted.

P. J. FARRELL,
E. M. REIDY,
For Interstate Commerce Commission,
Appellee.

MARCH, 1926.

○

No. [redacted] 812

In the Supreme Court of the United States

October Term, [redacted] 1925

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

In the Supreme Court of the United States

OCTOBER TERM, 1924

No. 982

WESTERN PAPER MAKERS' CHEMICAL COMPANY, A CORPORATION, AND TANGLEFOOT COMPANY, A CORPORATION, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN

SUGGESTIONS IN OPPOSITION TO APPELLANTS' MOTION FOR DIMINUTION OF RECORD FOR PRINTING

In all of that territory lying south of Tennessee and east of the Mississippi River to and including both of the Carolinas naval stores (rosin and turpentine) are produced and shipped therefrom into all of that territory lying west of the Buffalo-Pittsburgh line and to and even beyond the Mississippi River.

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That Southern territory is divided by the line of the Louisville & Nashville from Decatur, Ala., to Pensacola, Fla. The territory lying to the east of that line is known as Southeastern territory and the territory lying west is known as Mississippi Valley territory.

By tariffs to become effective between September 1, and October 1, 1923, the carriers operating in those territories proposed "a comprehensive revision of the rates on naval stores from all points of production." (87 I. C. C. 740.)

After extensive hearings, the rates found reasonable from Jacksonville and New Orleans, representative points in the respective origin groups, to destinations and considered in the Supplemental Report, are as follows (91 I. C. C. 226):

To—	From Jacksonville	From New Orleans
	Cents	*Cents*
Chicago	40	37
Kalamazoo	40	39
Milwaukee	42	39
Detroit	40	40
Grand Rapids	41	40

Under this adjustment the rate from the Southeast to Kalamazoo will be the same as to Chicago and Detroit, and the rate to Grand Rapids will be 1 cent less than to Milwaukee. From the Gulf ports and Mississippi Valley territory the rate to Kalamazoo will be 2 cents higher than to Chicago, and the rate to Grand Rapids will be 1 cent higher than to Milwaukee. (91 I. C. C. 226.)

The Commission found that Western Paper Makers' Chemical Company "and the manufacturer at Milwaukee now have a division of territory of distribution, and are no longer competitors." (91 I. C. C. 224.)

In establishing these slight differentials the Commission considered that the Illinois Central by its single-line route controls the rates from New Orleans to Chicago and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made. (91 I. C. C. 226.) The routes to Grand Rapids and Kalamazoo are less direct and embrace two or more carriers.

Tanglefoot Company and Western Paper Makers' Chemical Company are located at Grand Rapids and Kalamazoo, respectively.

Conceiving themselves aggrieved by this order of the Commission, appellants filed the original bill in the District Court at Grand Rapids and, *inter alia*, alleged "that there was no substantial evidence supporting the findings of the Interstate Commerce Commission and that such findings were contrary to the indisputable character of such evidence as was produced."

The United States and the Commission filed separate answers and denied generally and specifically this and similar allegations. (*Chicago Junction Case*, 264 U. S. 258.)

Counsel for the appellants procured a certified transcript of the entire record of the evidence and

proceedings before the Commission and offered the same on the hearing of the application for interlocutory injunction before Circuit Judges Denison and Knappen and District Judge Sessions. In their opinion the court say, "The entire record before the Commission is in evidence here." (App. Mo. p. 13.)

With a full opinion on the merits the learned District Court denied application for interlocutory injunction. After stipulation of the parties to submit the cause for final hearing, the District Court dismissed the bill on final decree. The appeal was then taken.

Without any attempt at diminution of the record, under Section 2 of the Commerce Court Act (36 Stat. 542), opposing counsel procured an order from the District Court directing "the original record to be transmitted on appeal instead of a transcript thereof."

In this Court the first point on which the appellants rely is that there was no evidence before the Commission on which to fix the through rate on rosin from points of origin to the cities of Grand Rapids and Kalamazoo. (App. Mo. p. 6.) To maintain that proposition, opposing counsel filed a designation for printing from which the transcript of the record before the Commission was excluded but in which certain excerpts therefrom were included. (App. Mo. p. 7.) Counsel for the appellees thereupon designated for printing the remainder of the transcript of the record. (App. Mo.

p. 21.) Counsel for the Government and the Commission did not designate the remainder of the transcript until after counsel for appellants designated only such portions thereof as in his judgment "would seem to be sufficient to raise the questions necessary for consideration." (App. Mo. p. 21.)

Counsel for appellants does not question the reasonableness of the estimate of the cost of printing as submitted by the Clerk, but claims that the cost is too heavy for his clients to bear.

Opposing counsel, therefore, is unwilling to print the material which he himself procured and offered before the District Court and had transmitted in its original form to this Court without any suggestion whatever that a diminution thereof should be made. Moreover, the Interstate Commerce Commission has itself reduced the record to narrative form, and he declines to accept that, because, he says, "The witnesses introducing as part of their testimony prolix schedules and maps, few if any of them, relating to the through freight rate on rosin; having to do in many instances with rates on other commodities." (App. Mo. p. 22.) His statement that many of the exhibits have "to do in many instances with rates on other commodities" is an argument against appellants as the Commission had the right to make comparisons.

Counsel for appellants states that counsel for the appellees "have submitted an agreed narrative form of the questions and answers given by

the witnesses on the oral hearing before the Interstate Commerce Commission" (App. Mo. p. 21), which embraces 361 pages, and while he is willing to pay for the printing of that he is unwilling to pay for the printing of the exhibits which were identified by this testimony and are a part of it.

Counsel for appellants further says—

> All of the matters that were before the Interstate Commerce Commission itself are on file in the office of the clerk of the Supreme Court, and at any time are available both to the court and counsel (App. Mo. p. 23.)

and—

> we are willing to stand on that here in this court, that the opinions of the Interstate Commerce Commission giving effect to the order of which complaint is made, show on their face that there was no substantial evidence before the Commission (App. Mo. p. 22),

and—

> So far as the appellants are concerned, they are willing to pledge themselves to confine their argument on appeal to the facts set out in the opinions of the Interstate Commerce Commission and the District Court of the Western District of Michigan * * *. (App. Mo. p. 22.)

It is difficult to reconcile these statements with the course of counsel in offering before the District Court the transcript of the Commission's

record, later transmitting it in its original form to this Court, and then designating therefrom "the part which would seem to be sufficient to raise the questions necessary for consideration." Nor are these statements in accord with the prayer of the motion, viz:

> Wherefore the appellants pray that an order may be made for a diminution of the record on printing, and that such order shall provide that the printed record shall contain the following: The pleadings; the opinions and decrees of the District Court, together with the orders of the Interstate Commerce Commission concerning said through freight rate on rosin; *with leave to either party in their oral arguments, or in their printed briefs, to set out or refer to any special portion of the certified copy of the proceedings before the Interstate Commerce Commission;* that such other and further order may be entered on this motion as to the court may seem just and proper. (App. Mo. pp. 4, 5.)

Obviously on an allegation and argument that there was no substantial evidence to sustain the findings of the Commission the court and counsel are entitled to the entire record, in either original or narrative form, upon which the findings were made. *Chicago Junction Case, supra; Northern Pacific Railway Co.* v. *The Department of Public Works of Washington, et al.*, No. 371, Supreme Court, October Term, 1924, decided April 13, 1925:

Kansas City, Mexico & Orient Division's Case, 265 U. S. 274; *New England Divisions Case*, 261 U. S. 184; *Louisiana & Pine Bluff Railway Co. v. United States*, 257 U. S. 114; *Interstate Commerce Commission v. Louisville & Nashville Railroad Co.*, 227 U. S. 88.

Counsel for appellants should either cooperate with the Commission to the end that a reduced record may be agreed upon, or he should abandon his point that there was no evidence before the Commission upon which to base its findings.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
P. J. FARRELL,
Solicitor for Interstate Commerce Commission.

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SUPREME COURT OF THE UNITED STATES.

No. 312.—October Term, 1925.

Western Paper Makers' Chemical Co. et al., *vs.* United States of America et al.	Appeal from the District Court of the United States for the Western District of Michigan.

[May 24, 1926.]

Mr. Justice Brandeis delivered the opinion of the Court.

This suit against the United States and the Interstate Commerce Commission was brought in the federal court for western Michigan to enjoin in part, and to modify, certain orders of the Commission, which established through rates on rosin from Atlantic and Gulf ports to Kalamazoo and Grand Rapids, Michigan. The proceedings before the Commission originated in tariffs filed during 1923 by carriers operating in Southeast and Mississipi Valley territory. By these tariffs a comprehensive revision of rates on naval stores, including rosin, from all such points of production was proposed. Shippers, including these plaintiffs, protested. The proposed rates were suspended; and extensive hearings in which the plaintiffs participated were held. An order was entered requiring cancellation of the filed tariffs. A new schedule of rates, including those complained of by plaintiffs, was finally authorized. *Naval Stores from Southern Producing Points to Various Destinations*, 87 I. C. C. 740; 89 I. C. C. 634. Upon specific exceptions filed by the plaintiffs to the Kalamazoo and Grand Rapids rates as proposed in the report of the Examiner, the Commission found that these rates were neither unreasonable nor unjustly discriminatory. *Western Paper Makers' Chemical Co.* v. *Director General*, 91 I. C. C. 223. The new rates to those cities are higher than the rates previously in effect. The Kalamazoo rates from Gulf ports are higher than those to Chicago; the

Grand Rapids rates from Gulf ports are higher than those to Milwaukee.

The case was heard in the District Court before three judges upon application for an interlocutory injunction. The plaintiffs claimed that the order was void in part, because the evidence introduced before the Commission did not justify the increased rates from Atlantic and Gulf ports to Kalamazoo and Grand Rapids; because the establishment of rates from Gulf ports to these cities higher than those enjoyed by competing manufacturers at Chicago and Milwaukee was unjust discrimination against Kalamazoo and Grand Rapids; and because the new rates involved a violation of the long and short haul clause of § 4 of the Interstate Commerce Act. The court found against the plaintiffs on each of their contentions and denied the injunction. 7 F. (2d) 164. Upon submission of the case for final hearing a decree dismissing the bill was entered on January 3, 1925. A direct appeal to this Court was taken under the Act of October 22, 1913, c. 32, 38 Stat. 208, 220. The record included all the evidence introduced before the Commission. Pursuant to an order of this Court, made on a motion of the plaintiffs for diminution of the record, counsel agreed upon a short statement of the whole evidence sufficient to enable this Court to consider whether there was any evidence to support the findings of the Commission.

The objections as presented here in brief and argument were addressed mainly to the soundness of the reasoning by which the Commission reached its conclusions. It was urged that these are inconsistent with conclusions reached by it in similar cases; that the findings are inconsistent with some views expressed in its reports in this proceeding; that some evidence was improperly considered; and that inferences drawn from some of the evidence were unwarranted. These objections we have no occasion to discuss. The determination whether a rate is unreasonable or discriminatory is a question on which the finding of the Commission is conclusive if supported by substantial evidence, unless there was some irregularity in the proceeding or some error in the application of the rules of law. *Skinner & Eddy Corporation* v. *United States*, 249 U. S. 557, 562; *New England Divisions Case*, 261 U. S. 184, 204. No such irregularity or error is shown. In making

its determinations the Commission is not hampered by mechanical rules governing the weight or effect of evidence. The mere admission of matter which under the rules of evidence applicable to judicial proceedings would be deemed incompetent does not invalidate its order. *United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 288. There was ample evidence to support the finding that the joint through rates regarded as entireties were reasonable and justified. Prior existing rates, whether locals or such proportionate rates from a key point to points of destination as were made applicable to this particular class of traffic, or through rates upon other commodities moving from similar points of origin, are proper matters for consideration in establishing new through rates. To consider the weight of the evidence is beyond our province.

Among the objections urged here was this: The rate from New Orleans to Chicago was fixed at 37 cents; that to Kalamazoo at 39. The rate from New Orleans to Milwaukee was fixed at 39 cents; that to Grand Rapids at 40. One of the many routes from the southern ports to Chicago theretofore open, was via Cincinnati and Kalamazoo; one of those to Milwaukee was via Cincinnati and Grand Rapids. These routes had been rarely used. If retained, they would have violated the long and short haul clause of § 4 of the Interstate Commerce Act unless relief therefrom was granted by the Commission. See *United States* v. *Merchants, etc., Association*, 242 U. S. 178. That relief it refused; and, to remove this obstacle to the higher Kalamazoo and Grand Rapids rates, it directed that these routes should be abandoned. The plaintiffs insist that the Commission could not lawfully close an existing route in order to avoid a fourth-section violation. The authority exercised was clearly within the broad discretion vested in the Commission. Compare *Louisiana & Pine Bluff Ry. Co.* v. *United States*, 257 U. S. 114.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.